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AMERICAN STATE PAPERS

BEARING ON

RELIGIOUS LEGISLATION





61

Thomas M. Cooley.

Blake

AMERICAN STATE PAPERS

LEGISLATIVE · EXECUTIVE · JUDICIAL

AMERICAN
STATE PAPERS

BEARING ON

SUNDAY LEGISLATION

COMPILED AND ANNOTATED BY

WILLIAM ADDISON BLAKELY

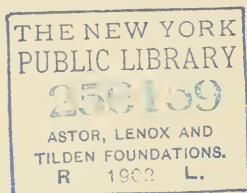
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EDITOR'S PREFACE.

POLITICAL history is a most interesting study ; and of all the political history of the world, no other has been so full of interest, so pregnant with matter for thought, as that of America for the last two centuries. The irrepressible spirit of liberty in the early Americans and the philosophical ideas on government characteristic of the times, united to bring forth a government more grand, more in accordance with human rights, more in harmony with the principles of Christ, than any the world had ever seen.

Political history an interesting study.

Inception of American institutions.

There is, however, a reaction taking place. And the revival of the religio-political ideas of medieval times, the practical operation of which, as declared by the United States Senate, "has been the desolating scourge of the fairest portions of the Old World," calls for the republication of American state papers which have marked the successive steps in our political history.

Religio-political ideas being revived.

Republication of American state papers demanded.

The influence of Roger Williams,¹ of Washington, of Jefferson, of Madison, and of their fellow-states-

Influence of characteristic Americans.

¹From the publications of the Narragansett Historical Society, I take the following :

"Roger Williams, says Professor Gervinus, in his recent 'Introduction to the History of the Nineteenth Century' (Translated from the German. H. G. Bohn, London, 1853, page 65), founded, in 1636, a small new society in Rhode Island, upon the principles of entire liberty of conscience, and the uncontrolled power of the majority in secular

Roger Williams.

Influence of
characteristic
Americans.

"Statue of
Liberty" a fit-
ting tribute to
America.

American
institutions.

America the
first to free
herself from
superstition.

Theories of
the schools of
philosophy.
A vain
prophecy.

Influence
of Rhode
Island's free
institutions.

men, has been felt throughout the world. The free institutions established by them have made the name "America" a synonym of liberty. The famous Bartholdi "Statue of Liberty," presented to America by France, is a fitting tribute to the Utopia of nations.

The world has marked with astonishment the unprecedented advancement of American institutions, founded, as they are, upon theories more in accordance with the principles of absolute civil and religious liberty—theories which, previous to the establishment of American institutions, had existed only in the schools of philosophy—theories evidently deducible from the principles of abstract justice and incontrovertible logic, but which had never had practical application.

A new nation, proud of Anglican liberty,—proud of our English political philosophers and statesmen of the past few centuries, who have so manfully asserted human rights,—proud of insuring to the *minority* their rights, was the first to free itself from the superstitious ideas which had made governments restrict or entirely destroy the rights which

concerns. . . . The theories of freedom in church and state taught in the schools of philosophy in Europe, were here brought into practice in the government of a small community. It was prophesied that the democratic attempts to obtain universal suffrage, a general elective franchise, annual parliaments, entire religious freedom, and the Miltonian right of schism, would be of short duration. But these institutions have not only maintained themselves here, but have spread over the whole Union. They have superseded the aristocratic commencements of Carolina and New York, the high-church party in Virginia, the theocracy in Massachusetts, and the monarchy throughout America; they have given laws to one quarter of the globe; and, dreaded for their moral influence, they stand in the background of every democratic struggle in Europe."

they were instituted to protect.¹ In striking contrast with the older governments, America has stood before an astonished world as a refuge for the persecuted, a home for the oppressed, the land of the free. Shall these institutions which have thus benefited humanity be supplanted in this enlightened age by the church and state dogmas of past centuries?

Contrast of governments.

Shall American institutions be maintained?

It is true that some of the States have never given up the idea that religion and the state must have some connection.² But, in contrast with this, our

Some States still retain un-American ideas.

¹ Bancroft very justly says :

"Vindicating *the right of individuality* even in religion, and in religion above all, the new nation dared to set the example of accepting in its relations to God the principle first divinely ordained in Judea. It left the management of temporal things to the temporal power; but the American Constitution, in harmony with the people of the several States, withheld from the federal government the power to invade the home of reason, the citadel of conscience, the sanctuary of the soul; and, *not from indifference*, but that the infinite spirit of eternal truth might move in its freedom and purity and power." "History of the Formation of the Constitution," book v, chapter i.

Right of individuality.

Divine assertion of liberty.

Motive underlying our political system.

² In Pennsylvania, North Carolina, South Carolina, Mississippi, Tennessee, and Maryland, atheists and such as deny a "future state of reward and punishments," are excluded from public offices, and blasphemy is subject to punishment. See the constitutional provisions of these States in Judge Cooley's "Constitutional Limitations," fifth edition, page 197, note. South Carolina also orders all persons "to apply themselves to the observation [of Sunday], by exercising themselves thereon in the duties of piety and true religion, publicly and privately, and having no reasonable or lawful excuse, on every Lord's day to resort to some meeting or assembly tolerated and allowed by the laws of the State." "Sunday Laws" (page 31), a paper read before the American Bar Association, 1880, by Henry E. Young, of the Charleston Bar; reprinted from the proceedings of the third annual meeting of the American Bar Association. In reference to Vermont (page 18), he says :

Relics of church and state.

Compulsory Sabbath observance.

Compulsory attendance at church.

"Vermont ordains positively that Sunday shall be kept as a Sabbath, holy-day, or day of rest from all secular labor, recreation, and employment, from twelve o'clock on Saturday night to sunset on Sunday. The penalty for violation is two dollars. Under a like penalty, and within a like time, no one can be present at any public assembly, except such as shall be held for the purpose of social and religious worship and

Sunday observance in Vermont.

American government not founded on religion.

national government declares that "the United States of America is not, in any sense, founded on

moral instruction; nor except from motives of humanity or charity, or for moral or religious edification, visit from house to house; nor travel from midnight of Saturday to midnight of Sunday; nor hold or attend any ball or dance, use any game, sport, or play, or resort to any house of entertainment for amusement or recreation. This State has the constitutional provision incorporated in the article on religious freedom, that every denomination of Christians should observe the Sabbath, or Lord's day, and keep up such sort of religious worship as to it seems agreeable to the 'revealed will of God.' "

All Christians to observe Sunday.

Our early colonial documents.

The early colonial laws and documents, especially, contain numerous provisions against heretics, infidels, and dissenting sects. They also abound in recognitions of God and the Bible, and provide for the punishment of persons daring to speak or act contrary to the prevalent ideas on the subject of religion. The writer has just received a book with numerous quotations from some of these laws and documents, as declarative of "American" principles. One might as well point to the "Star Chamber" as an institution of Anglican liberty; or to the scores of early laws which were the result of the superstitious ideas brought with them from the Old World as characteristic of the advancing spirit of liberty. Nothing is more evident than that the American spirit of liberty—the equal rights characteristic of our institutions—is absolutely incompatible with the forfeiture of property because one person refuses to go to church, or to observe a day which certain other persons consider as sacred; and that our institutions are absolutely incompatible with the hanging of Quakers, the lashing of women with bared backs through the streets in midwinter, or with the banishment of such persons as Roger Williams—and all on account of exercising their God-given rights in matters of conscience. American principles are the principles that frowned down that religious craze that had held the world captive so many years. American principles are the principles that have made the few remaining laws against infidelity, blasphemy, Sabbath-breaking, etc., a dead letter on the statute books of most of our States. American principles are the principles that say to the infidel, You have as much right to your opinion as the believer has to his; that say to the blasphemer, You have as much right to speak against the Christian religion in which you do not believe as the Christian has to speak against a religion in which he does not believe; that say to the Sabbatarian, You have as much right to work on Sunday as the Sunday-keeper has to work on Saturday; or as Herbert Spencer says, every man has the right to "the fullest liberty to exercise his faculties compatible with the exercise of like liberty by every other man;"—a more exact and philosophical statement of the self-evident truth in the Declaration of Independence, that "All men are created equal."

American institutions incompatible with persecution.

American principles.

Statement of a principle.

the Christian religion.”¹ The American government is founded upon human rights, upon the rights given to every man by his Creator, upon the inalienable rights of life, liberty, and the free exercise of one’s faculties. Pagan and Mahometan, Gnostic and Agnostic, Jew and Gentile, Catholic and Protestant, are all entitled to the unrestricted exercise of their equal rights, and to an impartial protection by the government in such exercise. These are the principles characteristic of American institutions; these were the principles of the founders of our government; these are the principles of Anglican liberty, and the ideals of Anglican philosophy.²

Foundation
of American
government.

All equally
entitled to the
exercise of
their rights.

¹Treaty with Tripoli, 1796, article 11, *post* page 54.

The celebrated report of the United States Senate of 1829, asserted the same principle in the following language :

“It is not the legitimate province of the legislature to determine what religion is true, or what false. Our government is a *civil* and *not a religious institution*. Our Constitution recognizes in every person the right to choose his own religion, and to enjoy it freely, without molestation. Whatever may be the religious sentiments of citizens, and however variant, they are alike entitled to protection from the government, so long as they do not invade the rights of others.” See *post* page 93.

Province of
government.

Rights of
individuals.

The report of the House of Representatives of 1830, declared also :

“The Constitution regards the conscience of the Jew as sacred as that of the Christian, and gives no more authority to adopt a measure affecting the conscience of a single individual than of a whole community.” See *post* page 110.

Jews have
same rights
as Christians.

²Burke, in his famous speech on “Conciliation with America,” attributed the American spirit to the fact that the colonists were of English descent, and “therefore not only devoted to liberty, but to liberty according to English ideas, and on English principles.”

Francis Lieber, in his work “On Civil Liberty and Self-Government” (London, 1853), page 214, says : “American liberty belongs to the great division of Anglican liberty [contradistinguished from Gallican liberty]. It is founded upon the checks, guarantees, and self-government of the Anglican tribe. The trial by jury, the representative government, the common law, self-taxation, the supremacy of the law, publicity, the submission of the army to the legislature, and whatever else has been enumerated, form part and parcel of our liberty. There are, how-

American
liberty a divi-
sion of Anglican
liberty.

Anglican
institutions.

"Liberty
enlightening
the world."

Effect of a
retrogradation.

Object
of this work.

As an outgrowth of these principles, we have in America "Liberty enlightening the world." But this liberty will exist only in name if we enact and enforce laws that are contrary to our constitutional rights, and unworthy a free and enlightened people.

It is to set forth the true American idea — absolute separation of religion from the state — absolute freedom for all in religious opinions and worship — that these papers are collected and republished.¹

WILLIAM ADDISON BLAKELY.

UNIVERSITY OF MICHIGAN,

ANN ARBOR, January 1, 1891.

Distinctive
American
institutions.

American
institutions
the logical
outgrowth of
Anglican
philosophy.

Plan of this
work.

Revival
of intolerant
laws.

Position
of national
government.

Position
of State
governments.

ever, features and guarantees which are peculiar to ourselves, and which, therefore, we may say constitute American liberty. They may be summed up, perhaps, under these heads: Republican federalism, strict separation of the state from the church, greater equality and acknowledgment of abstract right in the citizen, and a more popular or democratic cast of the whole polity." These last features, however, are but the logical outgrowth of the principles of Anglican liberty.

¹ There are numerous other state documents on this question that might be inserted, but the limited space permits only the principal ones, which set forth the subject in a clear and decided manner. Considerable space in the first part of this work is devoted to the foundation principles of the American government,—the absolute rights of the individual,—and the usurpation of government in interfering with one's vested rights. It was the same spirit of liberty which produced these and hundreds of other similar documents, that during our early history either banished from the statute books or relegated to the background our Sunday laws, compulsory attendance at church, laws against Unitarians, infidels, witches, Baptists, Quakers, Sabbatarians, etc. But now, in certain localities, we see some of these very laws being revived, and new and more stringent ones being demanded. From thirty to fifty cases of the prosecution of Sabbatarians for Sunday work have come to the editor's notice within the past few years, among them being an ordained minister. The national government has always maintained but one position — uncompromising opposition to Sunday legislation or any legislation whatever giving one sect or religion preference over another. But on the other hand the States have been divided on the question, the statute-books of most of the States containing Sunday laws, and by far the larger number of the judicial decisions upholding these laws. Hence, decisions have been inserted in this work both in favor of and against the constitutionality of Sunday laws.

CONTENTS.

PREFACE	<i>Editor</i>	5
INTRODUCTION	<i>Editor</i>	II
PLAN OF ACCOMMODATION WITH GREAT		
BRITAIN	<i>New York Provincial Congress</i>	17
VIRGINIA DECLARATION OF RIGHTS	<i>George Mason and Patrick Henry</i>	17
DECLARATION OF INDEPENDENCE	<i>Thomas Jefferson</i>	21
VIRGINIA ACT FOR ESTABLISHING RELIGIOUS		
FREEDOM	<i>Thomas Jefferson</i>	23
A MEMORIAL AND REMONSTRANCE	<i>James Madison</i>	27
NORTHWEST TERRITORIAL ORDINANCE	<i>Continental Congress</i>	40
CONSTITUTION OF THE UNITED STATES	<i>Constitutional Convention</i>	43
COMMENTS ON THE CONSTITUTION	<i>Madison, Henry, et al.</i>	44
PROPOSED AMENDMENTS TO THE CONSTITU-		
TION	<i>State and National Assemblies</i>	47
AMENDMENTS TO THE CONSTITUTION	<i>Congress</i>	50
TREATY WITH TRIPOLI	<i>United States Government</i>	54
RELIGIOUS PROCLAMATIONS UNCONSTITU-		
TIONAL	<i>Thomas Jefferson</i>	56
AN ACT REGULATING THE POST-OFFICE ES-		
TABLISHMENT	<i>Congress</i>	58
PETITIONS IN REFERENCE TO SUNDAY MAILS	<i>Synod of Pittsburg et al.</i>	58
REMONSTRANCE AGAINST SUNDAY MAILS	<i>Hon. Gideon Granger</i>	59
MEMORIAL AND PETITION AGAINST SUNDAY		
MAILS	<i>James P. Wilson et al.</i>	61
HOUSE REPORT ON SUNDAY MAILS	<i>Hon. John Rhea</i>	62
HOUSE REPORT ON SUNDAY MAILS	<i>Hon. John Rhea</i>	63
HOUSE REPORT ON SUNDAY MAILS	<i>Hon. John Rhea</i>	64
REPORT OF POSTMASTER-GENERAL	<i>Hon. Return J. Meigs, Jun.</i>	65
SENATE REPORT ON SUNDAY MAILS	<i>Hon. David Daggett</i>	65
DISCUSSION ON SUNDAY MAILS	<i>House of Representatives</i>	67
THE SPHERE OF CIVIL GOVERNMENT	<i>Thomas Jefferson</i>	69
THE RIGHTS OF JEWS	<i>James Madison</i>	73
CIVIL GOVERNMENT AND RELIGION	<i>James Madison</i>	75
RELIGION IN PUBLIC SCHOOLS	<i>James Madison</i>	78
CIVIL LAWS AGAINST BLASPHEMY	<i>John Adams</i>	80

AMERICAN STATE PAPERS.

AN ACT IN REFERENCE TO THE POST-OFFICE

DEPARTMENT	<i>Congress</i>	82
DISCUSSION ON SUNDAY MAILS	<i>United States Senate</i>	82
SENATE REPORT ON SUNDAY MAILS	<i>Col. Richard M. Johnson</i>	89
HOUSE REPORT ON SUNDAY MAILS	<i>Col. Richard M. Johnson</i>	101
MEMORIAL AGAINST SUNDAY LEGISLATION	<i>General Assembly of Indiana</i>	125
CHRISTIANITY AND THE COMMON LAW	<i>Thomas Jefferson</i>	127
CRIMES AGAINST GOD AND RELIGION	<i>Blackstone's Commentaries</i>	138
THE SOCIAL COMPACT	<i>James Madison</i>	142
SUNDAY CONTRACTS NOT VOID	<i>Justice Caldwell</i>	144
DECISION UPHOLDING SUNDAY LAWS	<i>Chief Justice Johnson</i>	146
RELIGIOUS LAWS UNCONSTITUTIONAL	<i>Hon. Allan C. Thurman</i>	151
DECISION UPHOLDING SUNDAY LAWS	<i>Judge Scott</i>	157
SUNDAY LAWS UNCONSTITUTIONAL	<i>Chief Justice Terry</i>	166
SUNDAY LAWS UNCONSTITUTIONAL	<i>Justice Burnett</i>	179
THE BIBLE IN THE PUBLIC SCHOOLS	<i>Justice Welch</i>	192
AMERICAN PUBLIC SCHOOLS	<i>General Grant</i>	202
AN UN-AMERICAN LETTER	<i>Hon. H. W. Blair</i>	206
PLEA FOR SABBATARIANS	<i>Hon. Robert H. Crockett</i>	208
SUNDAY LEGISLATION	<i>Attorney W. H. McKee</i>	214
THE BIBLE IN THE PUBLIC SCHOOLS	<i>New York Independent</i>	226
THE BIBLE IN THE PUBLIC SCHOOLS	<i>Justice Orton</i>	229

APPENDIX.

STATE CONSTITUTIONS	<i>Constitutional Conventions</i>	237
HISTORY OF SUNDAY LEGISLATION	<i>Dr. A. H. Lewis</i>	267
SUNDAY LAWS OF THE UNITED STATES	<i>State Legislatures</i>	272
SABBATARIANISM IN ARKANSAS	<i>St. Louis Globe-Democrat</i>	325
PERSECUTION OF BAPTISTS	<i>Patrick Henry</i>	326
SUNDAY LAWS	<i>Arkansas Bar Association</i>	330
OPERATION OF SUNDAY LAWS	<i>Judges Williams, Rose, et al.</i>	330
THE CELEBRATED KING CASE	<i>W. A. Colcord</i>	334
TESTIMONY IN THE KING CASE	<i>Witnesses Cole, Dobbins, et al.</i>	338
SUPREME COURT BRIEF	<i>Col. T. E. Richardson</i>	353
INDEX	<i>Editor</i>	361

INTRODUCTION.

The fundamental principle of American jurisprudence is that stated in the Declaration of Independence: that government is instituted to secure the rights of man. These rights are simply artificial divisions of the law of nature.¹ Now that which is to be secured — man's rights — precedes that which secures them — civil government. They are also superior to the provisions of government. Blackstone says: "This law of nature being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times. No human laws are of any validity if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original."

American
jurisprudence.

Law of
nature.

In the universal recognition (whether acknowledged or not) of this principle — that there is a superior standard of justice — lies the force of charges that certain legislative acts are unjust. For injustice is nonconformity to the law of justice — which is the natural law. If the legislature were omnipotent, if

Law of
justice the
superior law.

¹ "It [the term 'law of nature'] is not used among them that be learned in the laws of England to reason what thing as commanded or prohibited by the law of nature and what not; but all the reasoning in that behalf is under this manner:

Law of
nature.

"As when anything is grounded upon the law of nature, they say that reason will that such a thing be done; and if it be prohibited by the law of nature, they say that it is against reason, or that reason will not suffer it to be done." St. Germain's Doctor and Student, 11, 12, the authority cited by Lord Coke, *post* page 14, note.

Need of
an absolute
standard.

there were no superior law, if it could make right wrong and wrong right, then any law it might make could not be said to be unjust. Its own acts would be the standard of justice. Right would then be conformity to human law, and wrong, violation of human law. The absurdity of such a position is evident—the claim would be preposterous; as long as the maxim, *Humanum est errare*, is true, there must be some invariable standard by which all human acts, public as well as private, are to be judged. This standard is variously termed the law of justice, the law of nature, natural rights, etc., and has reference to those abstract principles of justice and right imprinted more or less clearly on the sense of every man.

Law of
nature in
declarations
of rights.

It is this law that receives formal recognition in our declarations of rights—declarations simply of certain parts of this superior law;—not that these rights are any more sacred when thus “declared” than they were before, but they are thus rendered more susceptible of enforcement. That they are simply a part of this higher law, and are so recognized, is proved by the provision so generally inserted in declarations of rights, that “the enumeration herein of certain rights shall not be construed to deny or disparage others retained by the people”—a direct acknowledgment that these rights inhere in the people, and that such declaration is simply an express acknowledgment of the most important principles of this law. Theoretically, it adds no force whatever to the rights. Such declaration is not dissimilar to the frequent instances where the State Constitutions re-enact certain provisions of the national Constitution. Such re-enactment does not make the provision any more binding; nor would a provision to the contrary annul the superior law. The State Constitution, in so far as it contravened the provisions of the national Constitution, would simply be void. Blackstone states this principle in his commen-

Rights not
created by
constitutions.

taries: "Those rights, then, which God and nature have established, and are therefore called natural rights, such as are life and liberty, need not the aid of human laws to be more effectually invested in every man than they are; neither do they receive any additional strength when declared by the municipal laws to be inviolable. On the contrary, no human legislature has the power to abridge or destroy them."

Rights inherent in man.

It is true that when recognized in our Constitutions, our rights are more easily enforced, and hence this recognition was insisted on by Jefferson and other early American statesmen. But because this recognition may not exist, one's rights cannot therefore be legitimately trampled upon. Even if the Constitution did not prohibit the taking of private property for public use without just compensation, the legislature could not therefore legitimately do it. Nor can the legislature rightfully take the property of A and give it to B. There is no court in the land that would enforce such a decree. It would violate this superior law, and therefore be absolutely void. Hence, as government is instituted to secure the natural rights of man, and as our Constitutions, in their declarations of rights, recognize this law and limit the powers of government accordingly, any law which deprives an individual of his rights is unconstitutional.

Rights recognized constitutionally to render them more secure.

Deprivation of any natural right unconstitutional.

In accordance with this principle, Jefferson declared: "Our legislators are not sufficiently apprised of the rightful limits of their power, that their true office is to declare and enforce only our natural rights and duties, and to take none of them from us. . . . The idea is quite unfounded that on entering into society we give up any natural right." This doctrine is coeval with courts of justice, and was unequivocally asserted and re-asserted centuries ago by England's most eminent Chief Justices. Said the distinguished Lord Hobart: "Even an act of Parliament, made against natural equity, as to make a man

Legislative limitations.

No natural rights surrendered.

Law of
nature im-
mutable.

judge in his own case, is void in itself; for *jura naturæ sunt immutabilia*, and they are *leges legum*.”¹

Enforce-
ment of this
principle.

Thus this American principle is simply that which has been declared again and again by the greatest jurists which have ever adorned the English bench. In “Elements of Right and of the Law” (section 520), Mr. Smith says: “It is a well-established principle of the American law, that an act of Congress in excess of the constitutional powers of the federal government is absolutely void; and so far as the direct infringement of private rights is concerned, this principle is in fact enforced by the courts; but in questions merely political, there is in general no practical means of restraining the execution of the law. Nevertheless such a law is void, and not only affords no legal justification to any one seeking to enforce it, but every subordinate officer, and indeed every private individual, has the right to disobey it, and will be vindicated in doing so by the courts.”

The foregoing is a brief summary of the reasons and authorities (though only a few out of many) es-

Acts against
natural rights
absolutely
void.

¹ Hobart, page 87; see also Bishop’s First Book of the Law, chapter 9, section 90. This principle, it seems, was well established; for Lord Coke cited numerous cases and said: “It appears in our books that in many cases the common law [that is, the courts] will control acts of Parliament, and sometimes adjudge them to be utterly void. For when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it and adjudge such act to be void. . . . Because it would be against common right and reason, the common law adjudges the said act of Parliament as to that point void. . . . The opinion of the court (in An. 27, Hilary Term 6, Annuity 41) was that this statute was void.” Dr. Bonham’s case, 8 Coke’s Reports, 118. See also Calvin’s case, 7 Coke’s Reports, 12–14, 25; 2 Brownlow’s Reports, 198, 265; Hardres’s Reports, 140; 2 Coke’s Institutes, 588.

Law of
nature cannot
be altered.

Unanimity
of opinion.

In Calvin’s case (page 14) Lord Coke declared emphatically: “The very law of nature itself, never was nor could be altered or changed. And therefore, it is certainly true that *jura naturalia sunt immutabilia*. And herewith agreeth Bracton, book 1, chapter 5, and Doctor and Student, chapters 5 and 6. And this appeareth plainly and plentifully in our books.”

tablishing the principles which permeate these American state papers. The individual retains his natural rights, and government is limited accordingly. And as every individual equally has the natural right to worship whom he pleases and on what day he pleases (as long as he interferes not with this same liberty in others), or to refrain from worshiping altogether, any human law interfering with this right, is, under our Constitutions, void ; it matters not whether it be a Sunday law, a law to compel him to attend church, or a law requiring any other religious observance, if it interferes with the right of a single individual, it is unconstitutional and absolutely void.

Application
of rights.

Nature of
interference
immaterial.

Contra-
dictory opin-
ions.

Precedent
and principle.

Mansfield's
statement.

Progress
in the science
of law.

It is true that our judiciary have not always had a clear conception of this principle, and numerous decisions are flatly contradictory, as is illustrated by the two positions on the constitutionality of religious laws presented in this work. But this is because in some cases precedents have been followed, not principles. Law, by some, has been regarded as a bundle of previous decisions, rather than as a science founded, like other sciences, on the immutable law of nature. The erroneousness of such a view must be obvious to all who have given it reflection. "The law of England," Lord Mansfield observed, "would be an absurd science were it founded upon precedent only."¹ And Lord Coke repeatedly declared that the law "is the perfection of reason." "Reason," said he, "is the life of the law ; nay, the common law itself is nothing else but reason."²

In the onward march of civilization and in the advancement of science in general, progress has also been made in our system of jurisprudence ;—

¹ Cited by Kent in his "Commentaries on American Law," volume i, page *477.

² Coke upon Littleton, section 976. Mr. Justice Powell, in *Coggs v. Bernard*, 2 Lord Raymond's Reports, 911, makes a similar statement : "Let us consider the reason of the case, for nothing is law that is not reason."

Law of
nature im-
mutable.

Church and
state ideas re-
pudiated in
America.

Objects of
government.

Departures
from funda-
mental prin-
ciples.

Cases
overruled.

Injustice to
Sabbatarians.

not that principles have changed, for the law of nature is both unchangeable¹ and immutable, but in this advancement clearer views of the principles of justice have been obtained.² Progress is especially seen in connection with religious legislation and religious decisions. In America the dogma that Christianity is a part of the common law has been repudiated. Sunday laws have been declared to be unconstitutional. Religious proclamations, too, were so held by Jefferson and Madison; and the latter also states that public chaplaincies are an illegitimate departure from American principles. And as our judges and legislators incline more to justice and reason and less to the precedents dictated by bigotry, our government will become still more liberal, and our Sunday laws, and all other religious laws, will go the way that similar laws have gone before them. In order to fulfil the objects of government, every man must be insured "the fullest liberty to exercise his faculties compatible with the exercise of like liberty by every other man." This is the principle asserted in the Declaration of Independence, when it says, "All men are created equal;" and the repeated departures from it in our religious laws which discriminate against the Sabbatarian³ and infidel are a standing reproach to our government, and a constant travesty on justice.

¹ "One rule can never vary, viz., the eternal rule of natural justice." Chief Justice Lee, in *Omychund v. Barker*, 1 Atkinson's Reports, 46.

² This is strikingly illustrated in the fact that "there are over one thousand cases to be pointed out in the English and American books of reports which have been overruled, doubted, or limited in their application." Kent's "Commentaries on American Law," volume i, page *477.

³ "The Jew who is forced to respect the first day of the week, when his conscience requires of him the observance of the seventh also, may plausibly urge that *the law discriminates against his religion*, and by forcing him to keep a second Sabbath in each week, *unjustly*, though by indirection, *punishes him for his belief*." Cooley's "Constitutional Limitations," page *476.

AMERICAN STATE PAPERS.

* * *

PLAN OF ACCOMMODATION WITH GREAT BRITAIN.

June 24, 1775.

And as the free enjoyment of the rights of conscience is of all others the most valuable branch of human liberty, and the indulgence and establishment of popery all along the interior confines of the old Protestant colonies tends not only to obstruct their growth, but to weaken their security, [*Resolved*,] that neither the Parliament of Great Britain, *nor any other earthly legislature or tribunal, ought or can of right interfere or interpose in anywise howsoever in the religious and ecclesiastical concerns of the colonies.*¹

Free enjoyment of rights of conscience the most valuable branch of human liberty.

No earthly power can of right interfere in religious concerns.

VIRGINIA DECLARATION OF RIGHTS.²

June 12, 1776.

ADOPTED JUNE 12, 1776.

A declaration of rights, made by the representatives of the good people of Virginia, assembled in Title.

¹ Adopted in the New York Provincial Congress, "Die Saturnii, 9 ho. A. M., June 24, 1775." "American Archives," Fourth Series, volume ii, pages 1317, 1318. Published under authority of an act of Congress, passed on the second of March, 1833.

² "American Archives," Fourth Series, volume vi, pages 1561, 1562. The Virginia Declaration of Rights was drafted in accordance with an order of the celebrated convention of Virginia of 1776, it being "*Resolved unanimously*, That a committee be appointed to prepare

Rights the basis and foundation of government.

All men equally independent.

full and free convention; which rights do pertain to them and their posterity, *as the basis and foundation of government.*

SECTION I. That all men are by nature *equally* free and independent,¹ and have certain inherent

Every man's innate sense asserts political equality.

Liberty of each limited only by the like liberty of all.

Evidence of the inference.

Perpetual tendency to assert the equality of human rights.

Equality before the law. All men naturally equal.

Declaration of American Independence.

Every man has an equal right with every other man.

a declaration of rights, and such a plan of government as will be most likely to maintain peace and order in this colony, and secure substantial and equal liberty to the people." *Ibid.*, page 1524. Similar provisions to those of the Virginia Declaration of Rights have subsequently been made in the Constitutions of nearly every State of the Union.

¹ Although the powers of earth are slow to recognize the fact, the sense of every man—yea, the sense of even the savage—asserts the self-evident truth that all men are created equal,—that no one has the right to usurp authority over the opinions of another. Treating of the evolution of the recognition of this principle, Herbert Spencer says:

"This first and all-essential law, declaratory of the liberty of each limited only by the like liberty of all, is that fundamental truth of which the moral sense is to give an intuition, and which the intellect is to develop into a scientific morality.

"Of the correctness of this inference there are various proofs, upon an examination of which we must now enter. And first on the list stands the fact, that, out of some source or other in men's minds, there keep continually coming utterances more or less completely expressive of this truth. Quite independently of any such analytical examinations as that just concluded, men perpetually exhibit a tendency to assert the equality of human rights. In all ages, but more especially in later ones, has this tendency been visible. In our own history we may detect signs of its presence as early as the time of Edward I, in whose writs of summons it was said to be 'a most equitable rule, that what concerns all should be approved of by all.' How our institutions have been influenced by it may be seen in the judicial principle that 'all men are equal before the law.' The doctrine that 'all men are naturally equal' (of course only in so far as their claims are concerned), has not only been asserted by philanthropists like Granville Sharpe, but as Sir Robert Filmer, a once renowned champion of absolute monarchy, tells us, 'Heyward, Blackwood, Barclay, and others that have bravely vindicated the rights of kings, . . . with one consent admitted the natural liberty and equality of mankind.' Again, we find the Declaration of American Independence affirming that 'all men have equal rights to life, liberty, and the pursuit of happiness;' and the similar assertion that 'every man has an equal right with every other man to a voice in the making of the laws which all are required to obey,' was the maxim of the Complete Suffrage movement. In his essay on 'Civil Government,' Locke, too, expresses the opinion that there is 'nothing more evident than

rights, of which, when they enter into a state of society, *they cannot, by any compact, deprive or divest their posterity*; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Inherent rights cannot be alienated by any compact.

SECTION 2. That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.

All power vested in the people. Magistrates, as servants, always amenable to the people.

SECTION 16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.¹

Religion can be directed only by reason, not by force.

All men are equally entitled to the free exercise of religion.

that creatures of the same species and rank, promiscuously born to the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection.' And those who wish for more authorities who have expressed the same conviction, may add the names of Judge Blackstone and 'the judicious Hooker.'

Locke says nothing is more evident.

"The sayings and doings of daily life continually imply some intuitive belief of this kind. We take for granted its universality, when we appeal to men's sense of justice. In moments of irritation it shows itself in such expressions as 'How would you like it?' 'What is that to you?' 'I've as good a right as you,' etc. Our praises of liberty are pervaded by it; and it gives bitterness to the invectives with which we assail the oppressors of mankind. Nay, indeed, so spontaneous is this faith in the equality of human rights, that our very language embodies it. *Equity* and *equal* are from the same root; and equity literally means *equalness*." "Social Statics," chapter 5, section 2.

Evidences exhibited in daily life.

Expressions indicating natural equality.

Our language itself an evidence of political equality.

¹ "On the twelfth of June, the convention adopted, without a dissenting voice, its celebrated 'Declaration of Rights,' a compact, luminous, and powerful statement, in sixteen articles, of those great fundamental rights that were henceforth to be 'the basis and foundation of government' in Virginia, and were to stamp their character

Declaration of Rights adopted unanimately.

Its influence seen in all subsequent Constitutions.

Liberty preserved only by adhering to fundamental principles.

The first assertion of religious liberty in Virginia.

Original article as written by Patrick Henry.

Madison an ardent advocate of religious liberty.

Religious toleration not religious liberty.

Religious liberty a right, not a privilege.

Government, of right, has no jurisdiction whatever in religious matters.

Madison's character.

upon that Constitution on which the committee were even then engaged. Perhaps no political document of that time is more worthy of study in connection with the genesis not only of our State Constitutions, but of that of the nation likewise. It is now known that, in the original draft, the first fourteen articles were written by George Mason, and the fifteenth and sixteenth by Patrick Henry. The fifteenth article was in these words :

“That no free government, or the blessings of liberty can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.”

“The sixteenth article is an assertion of the doctrine of religious liberty,—the first time that it was ever asserted by authority in Virginia. The original draft, in which Henry followed very closely the language used on that subject by the Independents in the Assembly of Westminster, stood as follows :

“That religion, or the duty we owe our Creator, and the manner of discharging it, can be directed only by reason and conviction, and not by force or violence ; and, therefore, that all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate, unless, under color of religion, any man disturb the peace, the happiness, or the safety of society ; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.” Edmund Randolph, manuscript, ‘History of Virginia.’” Tyler’s “Patrick Henry,” pages 183, 184.

Of Madison, who was a member of this convention, history says :

“Religious liberty was a matter that strongly enlisted his feelings. When it was proposed that, under the new Constitution, all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, Madison pointed out that this provision did not go to the root of the matter. The free exercise of religion, according to the dictates of conscience, is something which *every man may demand as a right, not something for which he must ask as a privilege*. To grant to the state the power of tolerating is implicitly to grant to it the power of prohibiting : whereas Madison would deny to it *any jurisdiction whatever* in the matter of religion. The clause in the Bill of Rights, as finally adopted, at his suggestion, accordingly declares that ‘all men are equally entitled to the free exercise of religion, according to the dictates of conscience.’ The incident not only illustrates Madison’s liberality of spirit, but also his precision and forethought in so drawing up an instrument as to make it mean all that it was intended to mean.” Appleton’s “Cyclopedia of American Biography,” volume iv, page 165.

The statements in the sixteenth section seemed to be proverbial of the times. The Presbytery of Hanover declared as follows :

DECLARATION OF INDEPENDENCE.

July 4, 1776.

IN CONGRESS, JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN
UNITED STATES OF AMERICA.¹

We hold these truths to be self-evident: that all men are created equal; that they are endowed, by their Creator, with certain unalienable rights; that among these are life, liberty,² and the pursuit of

American principles self-evident.
All men politically equal.

“The only proper objects of civil government are the happiness and protection of men in the present state of existence; the security of the life, liberty, and property of the citizen; and to restrain and encourage the virtuous by wholesome laws equally extended to every individual: but the duty that we owe to our Creator, and the manner of discharging it, can only be directed by reason and conviction, and is nowhere cognizable but at the tribunal of the universal Judge. To judge for ourselves, and to engage in the exercise of religion agreeably to the dictates of our own conscience, is an inalienable right, which, upon the principles on which the gospel was first propagated, and the reformation from popery carried on, can never be transferred to another.”

Man's temporal welfare the only proper object of government.
Manner of discharging religion cognizable only at the bar of God.

It was also asserted that if the Assembly had a right to determine the preference between Christianity and the other systems of religion that prevail in the world, they might also at a convenient time give a preference to some favored sect among Christians.

The free exercise of religion an inalienable right.

Washington entertained the same views:

Government has no right to give preference to Christianity.

“Every man who conducts himself as a good citizen, is accountable alone to God for his religious faith, and should be protected in worshipping God according to the dictates of his own conscience.”

Washington's views.

¹“United States Statutes at Large,” volume i, page 1.

²On the rights of life and personal liberty, Spencer says:

“These are such self-evident corollaries from our first principle [*i. e.*, that “Every man has freedom to do all that he wills, provided that he infringes not the equal freedom of any other man”] as scarcely to need a separate statement. If every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man, it is manifest that he has a claim to his life: for without it he can do nothing that he has willed; and to his personal liberty: for the withdrawal of it partially, if not wholly, restrains him from the fulfilment of his will. It is just as clear, too, that each man is forbidden to deprive

Corollaries self-evident from first principle.

Governments instituted to secure our rights.

happiness. That to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.¹

Jefferson the drafter of the Declaration of Independence.

The leading statesman of the times.

Political views.

A firm advocate of religious liberty.

Madison the best exponent of Jefferson's principles in the Constitutional Convention.

Jefferson's views on natural rights.

On entering into society man gives up no natural right.

Letter to Mr. Randolph. Best political works.

his fellow of life or liberty, inasmuch as he cannot do this without breaking the law, which, in asserting his freedom, declares that he shall not infringe 'the equal freedom of any other.' For he who is killed or enslaved is obviously no longer equally free with his killer or enslaver." "Social Statics," chapter 8, section 1.

¹ Thomas Jefferson was chairman of the committee appointed to draft the Declaration of Independence, and himself wrote the original, which met with very little alteration in the committee. Jefferson was both a scholar and a philosopher, and of all the great statesmen that the times produced, he undoubtedly took the lead. His views on government were those laid down by Locke—the social compact theory—that governments derive their just powers from the consent of the governed, and that no power on earth has a right to interfere with an individual's natural rights. Religious liberty had no firmer, no more consistent, advocate than Mr. Jefferson; and no other statesman of the times had a clearer idea of the foundation principles of our government. The nearest friend of Jefferson in the Constitutional Convention was Madison, who was also the best exponent of the principles held by that great democratic statesman. Jefferson's views on the doctrine of natural rights are found in a letter to Francis W. Gilmer, dated at Monticello, June 7, 1816: "Our legislators are not sufficiently apprised of the rightful limits of their power; that *their true office is to declare and enforce only our natural rights and duties, and to take none of them from us*. No man has a natural right to commit aggression on the equal rights of another; and this is all from which the laws ought to restrain him; every man is under the natural duty of contributing to the necessities of the society; and this is all the laws should enforce on him; and, no man having a natural right to be the judge between himself and another, it is his natural duty to submit to the umpirage of an impartial third. When the laws have declared and enforced all this, they have fulfilled their functions, and *the idea is quite unfounded, that on entering into society we give up any natural right*."

In reference to the best works on government, in a letter to Mr. Randolph, dated at New York, May 30, 1790, Jefferson said: "In political economy, I think Smith's *Wealth of Nations* is the best book extant; in the science of government, Montesquieu's *Spirit of Laws* is generally recommended. It contains, indeed, a great number of political truths; but also an equal number of heresies; so that the reader must be constantly on his guard. . . . Locke's little book on government, is perfect as far as it goes. Descending from theory to practice there is no better book than the *Federalist*. Burgh's *Political Disquisitions* are

AN ACT

Dec. 26, 1785.

FOR ESTABLISHING RELIGIOUS FREEDOM.¹

Well aware that Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burdens, or by civil incapacita-

God has created the mind free.

good also, especially after reading De Lome. Several of Hume's Political Essays are good. There are some excellent books of theory written by Turgot and the economists of France. For parliamentary knowledge, the *Lex Parliamentaria* is the best book." "Works of Thomas Jefferson," volume iii, page 145.

Subsequently, during his second term as President of the United States, in a letter to John Norvell, dated at Washington, June 11, 1807, he said: "I think there does not exist a good elementary work on the organization of society into civil government: I mean a work which presents in one full and comprehensive view the system of principles on which such an organization should be founded, according to the rights of nature. For want of a single work of that character, I should recommend Locke on Government, Sydney, Priestly's Essay on the First Principles of Government, Chipman's Principles of Government, and the Federalist." *Ibid.*, volume v, pages 90, 91.

Letter to John Norvell.

Works on government.

¹"Works of Thomas Jefferson," volume viii, page 454 *et seq.*; "Collection of the Laws of Virginia," by W. W. Hening, volume xii, page 84. Jefferson took more pride in this "Act for establishing religious freedom" than in anything else he ever wrote, except that immortal document, the Declaration of Independence. The following is a portion of an interesting letter written to his warm friend, James Madison:

Jefferson's pride in the Virginia bill for establishing religious freedom.

"PARIS, December 16, 1786.

" . . . The Virginia act for religious freedom has been received with infinite approbation in Europe, and promulgated with enthusiasm. I do not mean by the governments, but by the individuals who compose them. It has been translated into French and Italian, has been sent to most of the courts of Europe, and has been the best evidence of the falsehood of those reports which stated us to be in anarchy. It is inserted in the new Encyclopedia, and is appearing in most of the publications respecting America. . . ." "Works of Thomas Jefferson," volume ii, pages 55, 56.

Letter to Madison from Paris.

Reception of the act in Europe.

Its translation and publication.

Jefferson endeavored to effect this disestablishment a decade before. Speaking of the General Assembly of 1776, Parton says:

"Petitions for the repeal of statutes oppressive of the conscience of dissenters came pouring in upon the Assembly from the first day of the

Efforts made a decade before.

Temporal burdens tend to beget hypocrisy.

Religion not to be propagated by coercion.

Some legislators assume dominion over the faith of others.

Jefferson desired to establish absolute liberty at once.

No compulsion in matters of religion.

None to suffer on account of religious belief.

All to have equal privileges.

Nine years required to effect the passage of the act.

Liberality of the bill.

Its protection meant to be universal.

Religion meant to comprehend all—believers or unbelievers of the Bible.

tions, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy Author of our religion,¹ who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up

session. These being referred to the Committee of the Whole, led to the severest and longest struggle of the session. ‘Desperate contests,’ as Jefferson records, ‘continued almost daily from the eleventh of October to the fifth of December.’ He desired to sweep away the whole system of restraint and monopoly, and establish perfect liberty of conscience and opinion, by a simple enactment of half a dozen lines :

“‘No man shall be compelled to frequent or support any religious worship, ministry, or place whatsoever; nor shall be enforced, restrained, molested, or burdened in his body or goods; nor shall otherwise suffer on account of his religious opinions or belief: but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion; and the same shall in nowise diminish, enlarge, or affect their civil capacities.’”

“It required more than nine years of effort on the part of Jefferson, Madison, and their liberal friends, to bring Virginia to accept this solution of the religious problem, in its simplicity and completeness.” Par-ton’s “Life of Jefferson,” page 210.

¹ Illustrative of the spirit of liberty during the Revolutionary period and definitive of the meaning of the term “religion” in our early documents, I insert the following comments of Jefferson on the adoption of this part of the preamble, as found in his “Autobiography:”

“The bill for establishing religious freedom, the principles of which had, to a certain degree, been enacted before, I had drawn in all the latitude of reason and right. It still met with opposition; but, with some mutilations in the preamble, it was finally passed; and a singular proposition proved that *its protection of opinion was meant to be universal*. Where the preamble declares that coercion is a departure from the plan of the holy Author of our religion, an amendment was proposed, by inserting the word “Jesus Christ,” so that it should read, “a departure from the plan of Jesus Christ, the holy Author of our religion;” *the insertion was rejected by a great majority*, in proof that they meant to comprehend within the mantle of its protection *the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and infidel of every denomination*.” See “Works of Thomas Jefferson,” volume i, page 45.

their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time ; that to compel a man to furnish contributions of money for the propagations of opinions which he disbelieves, is sinful and tyrannical ; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporal rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors for the instruction of mankind ; that our civil rights have no dependence on our religious opinions, more than our opinions in physics or geometry ; that, therefore, the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to the offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow-citizens he has a natural right ; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing, with a monopoly of worldly honors and emoluments, those who will externally profess and conform to it ; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way ; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles, on the supposition of their ill tendency, is a dangerous fallacy,

Some endeavor to impose their opinions on others.

Compulsion in furnishing money for the propagation of opinions, tyrannical.

Even forcing one to support teachers of his own belief, deprives him of rightful liberty.

Civil rights have no dependence on religious opinions.

Any civil incapacitation on account of religion is a deprivation of natural right.

It also corrupts the religion it is meant to encourage.

The intrusion of civil power into the field of opinion destroys religious liberty.

Time
enough to in-
terfere when
principles
break out into
overt actions.

Truth will
prevail against
error if left to
herself.

No man
shall be molested or bur-
dened in body
or goods on
account of re-
ligious belief.

All men
shall be free to
maintain their
opinions in
matters of re-
ligion.

These rights
the natural
rights of man-
kind.

Any act to
the contrary
an infringeme-
nt of natu-
ral right.

which at once destroys all religious liberty, because he being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt actions against peace and good order; and, finally, that truth is great, and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them.

Be it therefore enacted by the General Assembly,
That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with the powers equal to our own, and that therefore to declare this act irrevocable, would be of no effect in law, yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right.

MADISON'S MEMORIAL.¹

DURING THE YEAR 1785.

To the Honorable, the General Assembly of the Commonwealth of Virginia:

A MEMORIAL AND REMONSTRANCE.

We, the subscribers, citizens of the said commonwealth, having taken into serious consideration a bill printed by order of the last session of General Assembly, entitled, "A bill establishing a provision for teachers of the Christian religion,"² and conceiving that the

Preamble.

Bill causing remonstrance.

¹ "Writings of James Madison," published by order of Congress, (Philadelphia, 1865), volume i, page 162, *et seq.*

² The bill was quite liberal, as it allowed every person to pay his money to his own denomination; or, if he did not wish it to go to any denomination, it was to go to the maintenance of a school in the county. The objection to it was that *it gave the Christian religion a preference over other beliefs, which was opposed to religious equality.* Madison said that it was "chiefly obnoxious on account of *its dishonorable principle and dangerous tendency.*" In a letter to Thomas Jefferson, dated at Richmond, January 9, 1785, Madison gave the following account of the bill:

Liberality of the bill.

Objection to bill.

Its dishonorable principle and dangerous tendency.

"A resolution for a legal provision for the 'teachers of the Christian religion' had early in the session been proposed by Mr. Henry, and, in spite of all the opposition that could be mustered, carried by forty-seven against thirty-two votes. Many petitions from below the Blue Ridge had prayed for such a law; and though several from the Presbyterian laity beyond it were in a contrary style, the clergy of that sect favored it. The other sects seemed to be passive. The resolution lay some weeks before a bill was brought in, and the bill some weeks before it was called for; after the passage of the incorporating act [incorporating the Protestant Episcopal Church], it was taken up, and, on the third reading, ordered by a small majority to be printed for consideration. The bill, in its present dress, proposes a tax of blank per cent on all taxable property, for support of teachers of the Christian religion. Each person when he pays his tax, is to name the society to which he dedicates it, and in case of refusal to do so, the tax is to be applied to the maintenance of a school in the county. As the bill stood for some time, the application in such cases was to be made by the Legislature to pious uses. In a Committee of the Whole it was determined, by a ma-

History of the bill.

Laity opposed it. Presbyterian clergy favored it.

Each person names his own religion.

A dangerous
abuse of power.

same, if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said bill —

Reasons for
remonstration.

1. Because we hold it for a fundamental and undeniable truth, "That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence."¹ The religion, then, of every man must be left to the conviction and conscience of every man; and *it is the right of every man to exercise it as these may dictate*. This right is in its nature an unalienable right. It is unalienable, because

Right to the
free exercise of
religion is in-
alienable.

Attempt to
make bill more
liberal.

The dis-
crimination
re-instated.

Its dishonor-
able principle
and dangerous
tendency.

Madison
calls it an act
for the corrup-
tion of our re-
ligious system.

Efforts of
Jefferson and
Madison.

Absolute
equality of all.

Representa-
tives defeated
on account of
voting for the
bill.

Presbyterian
clergy become
alarmed for
themselves.

majority of seven or eight, that the word 'Christian' should be exchanged for the word 'religious.' On the report to the House, the pathetic zeal of the late Governor Harrison gained a like majority for re-instating discrimination. Should the bill pass into a law in its present form, it may and will be easily eluded. It is chiefly obnoxious on account of its dishonorable principle and dangerous tendency." "Writings of James Madison," volume i, pages 130, 131.

In a letter to Marquis Fayette on March 20, he remarked: "Our Legislature . . . did not pass the act for the corruption of our religious system." *Ibid.*, page 140. It was laid over until the next session, and in the meantime Madison wrote and circulated his "Memorial and Remonstrance," which resulted in the defeat of the bill, and in the enactment of Jefferson's "Act for the establishment of religious freedom" in its stead. Thus by earnest effort on the part of Jefferson and Madison, the principle of absolute equality among all religious and among all religious believers — for the Jew, the Mahometan, the infidel, etc., as well as for the Christian — was established in Virginia as an exemplary precedent for other States. In a letter of May 29, to James Monroe, Madison said: "I have heard of several counties where the late representatives have been laid aside for voting for the bill, and not of a single one where the reverse has happened. The Presbyterian clergy, too, who were, in general, friends to the scheme, are already in another tone, either compelled by the laity of that sect, or alarmed at the probability of farther interferences of the Legislature if they once begin to dictate in matters of religion." "Writings of James Madison," volume i, pages 154, 155.

¹ "Declaration of Rights," article 16.

the opinions of men, depending only on the evidence contemplated in their own minds, cannot follow the dictates of other men. It is unalienable, also, because what is here a right towards men is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of civil society. Before any man can be considered as a member of civil society, he must be considered as a subject of the Governor of the universe; and if a member of civil society who enters into any subordinate association must always do it with a reservation of his duty to the general authority, much more must every man who becomes a member of any particular civil society do it with a saving of his allegiance to the universal Sovereign. We maintain, therefore, that in matters of religion no man's right is abridged by the institution of civil society, and that religion is wholly exempt from its cognizance. True it is, that no other rule exists by which any question which may divide a society can be ultimately determined than the will of the majority; but it is also true that the majority may trespass upon the rights of the minority.

Inalienability of religious liberty.

Duty of every man.

We must obey God rather than man.

Religious rights of no man abridged by entering society.

Religion is wholly exempt from the cognizance of government.

Majority may trespass upon rights of minority.

Legislatures no authority whatever over religion.

2. Because, if religion be exempt from the authority of the society at large, still less can it be subject to that of the legislative body. The latter are but the creatures and vicegerents of the former. Their jurisdiction is both derivative and limited. It is limited with regard to the coördinate departments; more necessarily is it limited with regard to the constituents. The preservation of a free government requires, not merely that the metes and bounds which separate each department of power be invariably maintained, but more especially that neither

Rights of
people are su-
preme.

Encroaching
rulers are ty-
rants.

Submitting
people are
slaves.

First step
should cause
alarm.

Precedents
dangerous.

The princi-
ple itself
should be
opposed.

Establish-
ment of Chris-
tianity op-
posed.

Smallest in-
fringements
tyrannical.

Equality the
right basis of
every law.

All men
equal.

No one has
less rights than
another.

of them be suffered to overleap the great barrier which defends the rights of the people. The rulers who are guilty of such an encroachment exceed the commission from which they derive their authority, and are tyrants. The people who submit to it are governed by laws made neither by themselves nor by an authority derived from them, and are slaves.

3. Because it is proper to take alarm at the first experiment upon our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of the noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much soon to forget it. *Who does not see that the same authority which can establish Christianity, in exclusion of all other religions, may establish, with the same ease, any particular sect of Christians, in exclusion of all other sects?* that the same authority which can force a citizen to contribute *three pence only* of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

4. Because the bill violates that equality which ought to be the basis of every law, and which is more indispensable in proportion as the validity or expediency of any law is more liable to be impeached. "If all men are by nature *equally* free and independent,"¹ all men are to be considered as entering into society on *equal* conditions; *as relinquishing no more*, and, therefore, *retaining no less, one than another, of their natural rights*. Above all,

¹ "Declaration of Rights," article 1.

are they to be considered as retaining an "*equal*" title to the free exercise of religion according to the dictates of conscience."¹ Whilst we assert for ourselves a freedom to embrace, to profess, and to observe, the religion which we believe to be of divine origin, *we cannot deny an equal freedom to them whose minds have not yet yielded to the evidence which has convinced us.* If this freedom be abused, it is an offense against God, not against man. To God, therefore, not to man, must an account of it be rendered. *As the bill violates equality by subjecting some to peculiar burdens, so it violates the same principle by granting to others peculiar exemptions.* Are the Quakers and Mennonists the only sects who think a compulsive support of their religions unnecessary and unwarrantable? Can their piety alone be entrusted with the care of public worship? Ought their religions to be endowed above all others with extraordinary privileges by which proselytes may be enticed from all others? We think too favorably of the justice and good sense of these denominations to believe that they either covet preëminences over their fellow-citizens, or that they will be seduced by them from the common opposition to the measure.²

Retention of religious equality of paramount importance.

No Christian can deny equal freedom to unbelievers.

Equality is violated in preferences and exemptions.

¹ "Declaration of Rights," article 16.

² A similar favor was held out to Sabbatarians by the Sunday-rest agitators. A Sunday bill was introduced in the Senate of the United States, May 21, 1888, and, largely through the opposition of Sabbatarians, was killed. The following year *another Sunday bill was introduced, but containing a clause exempting conscientious observers of the seventh day from its operations.* It seems, however, that they, too, had too much justice and good sense to either covet preëminence over their fellow-citizens, or to be seduced by the favor from the common opposition to the measure. Professor Jones, their representative at the hearing held February 18, 1890, before the House Committee on the District of Columbia, in the United States Congress, speaking on this point, said :

"Why, then, does he [Mr. Crafts] propose to exempt these [Seventh-day Adventists and Seventh-day Baptists]? Is it out of respect

Attempted check on Sabbatarian opposition.

Reasons for exempting Sabbatarians.

The magistrate not competent to decide what is religious truth.

An arrogant pretension.

5. Because the bill implies either that the civil magistrate is a competent judge of religious truths, or that he may employ religion as an engine of civil policy. The first is an arrogant pretension, falsified by the contradictory opinions of rulers in all ages and throughout the world; the second, an unhallowed perversion of the means of salvation.

for them, or a desire to help them in their good work? Not much. *It is hoped by this to check their opposition until Congress is committed to the legislation.*

The words of leading Sunday-rest agitators.

"How do we know this? We know it by their own words. The lady who spoke here this morning as the representative of the Woman's Christian Temperance Union, Mrs. Catlin, said in this city, 'We have given them an exemption clause, and that, we think, will take the wind out of their sails.' Well, if our sails were dependent upon legislative enactments, and must needs be trimmed to political breezes, such a squall as this might take the wind out of them. But so long as they are dependent alone upon the power of God, wafted by the gentle influences of the grace of Jesus Christ, such squalls become only prospering gales to speed us on our way.

Object of the proposed exemption.

"By this, gentlemen, you see just what is the object of that proposed exemption—that it is only to check our opposition until they secure the enactment of the law, and that they may do this the easier. Then when Congress shall have been committed to the legislation, it can repeal the exemption upon demand, and then the advocates of the Sunday law will have exactly what they want. I am not talking at random here. I have the proofs of what I am saying. They expect a return for this exemption. It is not extended as a guaranteed right, but as a favor that we can have if we will only pay them their own stated price for it. As a proof of this I read again from Mr. Crafts's book, page 262 :

Legislatures too lenient to Sabbatarians!

"The tendency of legislatures and executive officers toward those who claim to keep a Saturday Sabbath is to over-leniency rather than to over-strictness.' . . .

"Again I read, and here is the point to which I wish especially to call the attention of the committee. It shows that they intend we shall pay for the exemption which they so over-generously offer:

A sample of exemplary generosity—granting what is an inherent right!

"Instead of reciprocating the generosity shown toward them by the makers of Sabbath laws, these seventh-day Christians expend a very large part of their energy in antagonizing such laws, seeking, by the free distribution of tracts and papers, to secure their repeal or neglect.'" "Arguments on the Breckinridge Sunday Bill" (New York, 1890), page 37 *et seq.*

6. Because the establishment proposed by the bill is not requisite for the support of the Christian religion. To say that it is, is a contradiction to the Christian religion itself, for every page of it disavows a dependence on the powers of this world. It is a contradiction to fact, for it is known that this religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them; and not only during the period of miraculous aid, but long after it had been left to its own evidence and the ordinary care of providence. Nay, it is a contradiction in terms; for a religion not invented by human policy must have preëxisted and been supported before it was established by human policy. It is, moreover, to weaken in those who profess this religion a pious confidence in its innate excellence and the patronage of its Author; and to foster in those who still reject it a suspicion that its friends are too conscious of its fallacies to trust it to its own merits.

Christian religion needs not human aid.

Success of Christianity unsupported by human law.

Deleterious effects of establishing Christianity.

7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of religion, have had a contrary operation. During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less, in all places, pride and indolence in the clergy; ignorance and servility in the laity; in both, superstition, bigotry, and persecution. Inquire of the teachers of Christianity for the ages in which it appeared in its greatest luster; those of every sect point to the ages *prior to its incorporation with civil policy*. Propose a restoration of this primitive state, in which its teachers depended on the voluntary rewards of their flocks;—many of them predict its downfall. On which side ought their testimony to have greatest weight;—when for, or when against, their interest?

Experience of the past.

Effect on clergy and laity.

Greatest purity of the Christian religion prior to its receiving state aid.

Establishment of Christianity not necessary.

Religion not in the cognizance of government.

Effects of ecclesiastical establishments.

Good government secures to every citizen equal religious enjoyment.

A departure from the policy of our government.

A sad degeneracy.

Equality of citizens invaded.

Similarity to Inquisition.

8. Because the establishment in question is not necessary for the support of civil government. If it be urged as necessary for the support of civil government only as it is a means of supporting religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If religion be not within the cognizance of civil government, how can its legal establishment be necessary to civil government? What influence, in fact, have ecclesiastical establishments had on civil society? In some instances they have been seen to erect a spiritual tyranny on the ruins of civil authority; in many instances they have been seen upholding the thrones of political tyranny; in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty may have found in established clergy convenient auxiliaries. A just government, instituted to secure and perpetuate it, needs them not. Such a government will be best supported by protecting every citizen in the enjoyment of his religion with the same equal hand which protects his person and his property; by neither invading the equal right of any sect, nor suffering any sect to invade those of another.

Because the proposed establishment is a departure from that generous policy which, offering an asylum to the persecuted and oppressed of every nation and religion, promised a luster to our country, and an accession to the number of its citizens. What a melancholy mark is the bill of sudden degeneracy! Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of citizens all those whose opinions in religion do not bend to those of the legislative authority. Distant as it may be in its present form from the Inquisition, it differs from it only in degree. The one is the first step, the other is the last in the career

of intolerance. The magnanimous sufferer of this cruel scourge in foreign regions must view the bill as a beacon on our coast warning him to seek some other haven, where liberty and philanthropy, in their due extent, may offer a more certain repose from his troubles.

Sufferers from persecutions will be repelled.

Because it will have a like tendency to banish our citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration by revoking the liberty which they now enjoy, would be the same species of folly which has dishonored and depopulated flourishing kingdoms.

Effect on emigration.

Because it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with religion has produced among its several sects. Torrents of blood have been spilt in the Old World in consequence of vain attempts of the secular arm to extinguish religious discord by proscribing all differences in religious opinion. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American theater has exhibited proofs that equal and complete liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the State. If, with the salutary effects of this system under our own eyes, we begin to contract the bounds of religious freedom, we know no name which will too severely reproach our folly. At least, let warning be taken at the first-fruits of the threatened innovation. The very appearance of the bill has transformed "that Christian forbearance, love, and charity,"¹ which of late mutually prevailed, into animosities and jealousies, which

Religious preferences foster discord.

Effect of proscribing religious differences.

Salutary effect of equal and complete liberty.

Threatened innovations should be repulsed.

¹ "Declaration of Rights," article 16.

Dangers of religious legislation.

may not soon be appeased. What mischiefs may not be dreaded, should this enemy to the public quiet be armed with the force of law ?

Preference of Christian religion detrimental to itself.

Because the policy of the bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false religions, and how small is the former ! Does the policy of the bill tend to lessen the disproportion ? No ; it at once discourages those who are strangers to the light of revelation from coming into the region of it, and countenances by example the nations who continue in darkness in shutting out those who might convey it to them. Instead of leveling, as far as possible, every obstacle to the victorious progress of truth, the bill, with an ignoble and unchristian timidity, would circumscribe it with a wall of defense against the encroachments of error.

Evangelization retarded.

Ignoble and unchristian timidity exhibited.

Injurious tendencies in general.

Because attempts to enforce, by legal sanctions, acts obnoxious to so great a proportion of citizens, tend to enervate the laws in general, and to slacken the bands of society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case where it is deemed invalid and dangerous ? And what may be the effect of so striking an example of impotency in the government on its general authority ?

The great importance of the measure.

Because a measure of such singular magnitude and delicacy ought not to be imposed without the clearest evidence that it is called for by a majority of citizens ; and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. "The people of the respective counties are, indeed,

requested to signify their opinion respecting the adoption of the bill to the next session of the Assembly." But the representation must be made equal before the voice either of the representatives or of the counties will be that of the people. Our hope is, that neither of the former will, after due consideration, espouse the dangerous principle of the bill. Should the event disappoint us, it will still leave us in full confidence that a fair appeal to the latter will reverse the sentence against our liberties.

Request for expression of opinion.

Hopes for the ill success of the dangerous principle.

Because, finally, "the equal right of every citizen to the free exercise of his religion, according to the dictates of conscience," is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the declaration of those rights "which pertain to the good people of Virginia as the basis and foundation of government,"¹ it is enumerated with equal solemnity, or rather with studied emphasis. Either, then, we must say that the will of the Legislature is the only measure of their authority, and that in the plenitude of that authority they may sweep away all our fundamental rights, or that they are bound to leave this particular right untouched and sacred. Either we must say that they may control the freedom of the press, may abolish the trial by jury, may swallow up the executive and judiciary powers of the State; nay, that they may despoil us of our very right of suffrage, and erect themselves into an independent and hereditary Assembly; or we must say that they have no authority to enact into a law the bill under consideration.

Equal rights in the exercise of religion held by same tenure with other rights.

A natural right.

If legislatures can interfere with religion, they can take away all fundamental rights.

Either we must say they are omnipotent, or that they can establish no religious preferences.

We, the subscribers, say that the General Assembly of this commonwealth have no such authority.

Declaration of petitioners.

¹ "Declaration of Rights," title; *ante* page 17.

Showing preference for the Christian religion a dangerous usurpation.

Invocation to the Supreme Lawgiver.

Prayer was answered and bill defeated.

Two invaluable documents.

The inception of the memorial.

Very extensively signed by Christians.

Jefferson's bill a permanent barrier against religious legislation.

Letter to General La Fayette.

And in order that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it this remonstrance; earnestly praying, as we are in duty bound, that the Supreme Lawgiver of the universe, by illuminating those to whom it is addressed, may, on the one hand, turn their councils from every act which would affront his holy prerogative, or violate the trust committed to them; and, on the other, guide them into every measure which may be worthy of his blessing, redound to their own praise, and establish more firmly the liberties, the prosperity, and the happiness of the commonwealth.¹

¹ The prayer of these magnanimous and exemplary Christians was answered; for the bill "establishing a provision for the teachers of the Christian religion" was defeated, and Jefferson's "Act for establishing religious freedom," *ante* page 23, was passed by the Assembly in its stead. There are two documents that are invaluable in arriving at a proper conclusion in reference to the views held by our early statesmen—the famous "Act for establishing religious freedom," written by Thomas Jefferson, and the celebrated "Memorial and Remonstrance," written by James Madison, and circulated and signed in the remotest parts of the State.

In reference to the inception of this memorial, he said, forty years afterwards, in a letter to George Mason: "Your highly distinguished ancestor, Col. Geo. Mason, Col. Geo. Nicholas also possessing much public weight, and some others, thought it would be advisable that a remonstrance against the bill should be prepared for general circulation and signature, and imposed on me the task of drawing up such a paper. This draught, having received their sanction, a large number of printed copies were distributed, and so extensively signed by the people of every religious denomination, that at the ensuing session the projected measure was entirely frustrated; and under the influence of the public sentiment thus manifested, the celebrated bill 'establishing religious freedom' enacted a permanent barrier against future attempts on the rights of conscience, as declared in the great charter prefixed to the Constitution of the State." "Writings of James Madison," volume iii, page 526.

In a letter to General La Fayette, dated at Montpelier, November, 1826, Madison gave the following account of the controversy:

"In the year 1775, a bill was introduced under the auspices of Mr. Henry, imposing a general tax for the support of 'teachers of the Christian religion.' It made a progress, threatening a majority in its favor. As an expedient to defeat it, we proposed that it should be post-

poned to another session, and printed in the meantime for public consideration. Such an appeal in a case so important and so unforeseen could not be resisted. With a view to arouse the people, it was thought proper that a memorial should be drawn up, the task being assigned to me, to be printed and circulated through the State for a general signature. The experiment succeeded. The memorial was so extensively signed by the various religious sects, including a considerable portion of the old hierarchy, that the projected innovation was crushed; and, under the influence of the popular sentiment thus called forth, the well-known bill prepared by Mr. Jefferson, for 'establishing religious freedom,' passed into a law, as it now stands in our code of statutes." "Writings of James Madison," volume iii, page 543.

Postponement.

Extensively signed by Christians.

Adoption of Jefferson's bill.

On the importance of consulting the writings of our early statesmen to obtain correct views of the principles advocated by them, Madison says:

"It has been the misfortune of history, that a personal knowledge and an impartial judgment of things rarely meet in the historian. The best history of our country, therefore, must be the fruit of contributors bequeathed by cotemporary actors and witnesses to successors who will make an unbiased use of them. And if the abundance and authenticity of the materials which still exist in the private as well as public repositories among us should descend to hands capable of doing justice to them, the American history may be expected to contain more truth, and lessons certainly not less valuable, than those of any country or age." "Writings of James Madison," volume iii, pages 308, 309.

Importance of American history.

Both Jefferson and Madison were opposed to the state's having *anything whatever* to do with regulating religious observances of any kind; and the liberal spirit supported them. But as this spirit is supplanted by self-interests, the intolerance of state-churchism again manifests itself in reviving the old religious laws, and prosecuting Sabbatarians for Sunday labor, etc. Jefferson, foreseeing this, desired to have all religious laws swept from the statute books, not willing to have them remain as a dead letter, which might at any time be revived by the partisan zealot. In his "Notes on Virginia," query xvii, Jefferson says:

The state should have nothing whatever to do with religion.

"Besides, the *spirit of the times may alter, will alter*. Our rulers will become corrupt, our people careless. A single zealot may commence persecution, and better men be his victims. It can never be too often repeated, that the time for fixing every essential right on a legal basis is while our rulers are honest, and ourselves united. From the conclusion of this war we shall be going down hill. It will not then be necessary to resort every moment to the people for support. They will be forgotten, therefore, and *their rights disregarded*. They will forget themselves, but in the sole faculty of making money, and will never think of uniting to effect a due respect for their rights. *The shackles, therefore, which shall not be knocked off at the conclusion of this war, will remain on us long, will be made heavier and heavier, till our rights shall revive or expire in a convulsion.*"

Danger from the zealot.

Danger from intolerent laws unrepealed.

July 13, 1787.

AN ORDINANCE

FOR THE GOVERNMENT OF THE TERRITORY OF
THE UNITED STATES NORTHWEST OF
THE RIVER OHIO.¹

ADOPTED IN THE CONTINENTAL CONGRESS, JULY 13, 1787.

ARTICLE I.

No orderly
person shall
ever be molested on account of his
worship.

No person demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments in the said territory.

ARTICLE III.

Religion,
morality, and
knowledge being
a necessity,
education
shall forever be
encouraged.

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.²

Adoption of
ordinance.

¹ "While the Constitutional Convention was in session at Philadelphia, the Continental Congress, sitting under the Articles of Confederation, passed an ordinance July 13, 1787, 'for the government of the territory of the United States northwest of the river Ohio.' This territory was ceded by Virginia to the United States, and embraced the present States of Ohio, Indiana, Illinois, Michigan, and Wisconsin. The same ordinance was afterwards extended to Tennessee, Alabama, and Mississippi. This ordinance provides for full religious liberty on the one hand, and for the cultivation of religion, morality, and education, as essential conditions of national prosperity." "Church and State in the United States," page 119. The articles above were among those which were to "forever remain unalterable." See "Charters and Constitutions of the United States," volume ii, page 431.

Articles to
forever remain
unalterable.

Erroneous
views.

² It is maintained that the word "religion" in this article has reference specifically to the "Christian religion," and that provision is here made for the teaching of "Christian principles" in the public schools. No such idea, however, is contained in the article. The word "religion" as used in our early state documents, was a generic term, and had reference to all systems of belief in a superior power. A similar question arose about a year previous to the adoption of this ordinance, in the

very Assembly that ceded this territory to the United States—the General Assembly of the State of Virginia. And in reporting this, Jefferson says: “Where the preamble declares that coercion is a departure from the plan of the holy Author of our religion, an amendment was proposed by inserting the word ‘Jesus Christ,’ so that it should read, ‘a departure from the plan of Jesus Christ, the holy Author of our religion;’ *the insertion was rejected by a great majority*, in proof that they meant to comprehend, within the mantle of its protection, *the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and infidel of every denomination.*” “Works of Thomas Jefferson,” volume i, page 45.

Declaration of the General Assembly of Virginia.

Religion meant to comprehend all—believers or unbelievers of the Bible.

On the provision in question, which was afterwards incorporated in the Constitution of the State of Ohio, the Supreme Court says as follows: “If, by this generic word ‘religion,’ was really meant ‘the Christian religion,’ or ‘Bible religion,’ why was it not plainly so written? Surely the subject was of importance enough to justify the pains, and surely it was of interest enough to exclude the supposition that it was written in haste, or thoughtlessly slurred over. At the time of adopting our present Constitution, this word ‘religion’ had had a place in our old Constitution for half a century, which was surely ample time for studying its meaning and effect, in order to make the necessary correction or alteration, so as to render its true meaning definite and certain. The same word ‘religion,’ and in much the same connection, is found in the Constitution of the United States. The latter Constitution, at least, if not our own also, in a sense, speaks to *mankind*, and speaks of the rights of *man*. Neither the word ‘Christianity,’ ‘Christian,’ nor ‘Bible,’ is to be found in either. When they speak of ‘religion,’ they must mean the religion of man, and not the religion of any *class* of men. When they speak of ‘all men’ having certain rights, they cannot mean merely ‘all Christian men.’ Some of the very men who helped to frame these Constitutions were themselves not Christian men. . . .

Decision of the Ohio Supreme Court.

Meaning of the word “religion.”

“The declaration is, not that government is essential to good religion, but that religion is essential to good government. Both propositions are true, but they are true in quite different senses. Good government is essential to religion for the purpose declared elsewhere in the same section of the Constitution, namely, for the purpose of mere *protection*. But religion, morality, and knowledge are essential to government, in the sense that they have the instrumentalities for *producing and perfecting* a good form of government. On the other hand, no government is at all adapted for producing, perfecting, or propagating a good religion. Religion, in its widest and best sense, has most, if not all, the instrumentalities for producing the best form of government. Religion is the parent, and not the offspring, of good government. Its kingdom is to be *first* sought, and good government is one of those things which will be added thereto. True religion is the sun which gives to government all its true lights, while the latter merely acts upon religion by reflection.

Government essential to religion only to protect it.

No government adapted to propagate good religion.

State religion is some individual's religion.

Whose religion shall the state adopt?

To what extent will it go?

Religious instruction violative of Ohio's Constitution.

Christianity not a part of Ohio's common law.

Duty of the government to religion.

Encouragement given by our government to religion.

“Properly speaking, there is no such thing as ‘religion of state.’ What we mean by that phrase is, the religion of some individual, or set of individuals, taught and enforced by the state. The state can have no religious opinions; and if it undertakes to enforce the teaching of such opinions, they must be the opinions of some natural person or class of persons. If it embarks in this business, whose opinion shall it adopt? If it adopts the opinions of more than one man, or one class of men, to what extent may it group together conflicting opinions? or may it group together the opinions of all? And where this conflict exists, how thorough will the teaching be? Will it be exhaustive and exact, as it is in elementary literature and in the sciences usually taught to children? and, if not, which of the doctrines or truths claimed by each will be blurred over, and which taught in preference to those in conflict? These are difficulties which we do not have to encounter when teaching the ordinary branches of learning. It is only when we come to teach what lies ‘beyond the scope of sense and reason’—what, from its very nature, can only be the object of *faith*—that we encounter these difficulties.”

And the counsel (among them Hon. Stanley Matthews and Hon. George Hoadley) for the Cincinnati Board of Education under the Ohio Constitution containing the above provision, in their argument to the Supreme Court in this case, said:

“The State is, in Ohio, forbidden to interfere with, or exercise the office of, the church. ‘Religious instruction and the reading of religious books, including the Holy Bible,’ cannot be prosecuted in schools supported by the taxation of men of all religious opinions, without the violation of section 7, article 1, and section 2, article 6, of the Constitution.

“Neither Christianity nor any other system of religion is a part of the law of this State. *Bloom v. Richards*, 2 Ohio State, 387; Thurman, Justice, in *McGatrick v. Wason*, 4 Ohio State, 571; article 11 of the treaty with Tripoli, concluded by the administration of George Washington, November 4, 1796, 8 United States Statutes at Large, 155.”

It is the duty of the state to “encourage” religion *by giving every individual of whatever belief a full and impartial protection in the promulgation and exercise of his belief*. As this has been the general policy of this government, we have as a result, better government and a better morality than any other nation. The encouragement of religion is an incident in insuring civil liberty, of which religious liberty and free thought are the most important branches. Religion in general has been encouraged to such an extent that America has been termed the “home of the persecuted;” for here the Jew or Mahometan has equal rights—even though through the inefficiency or prejudice of the internal police they may not always be protected as they should be—with the highest professor of Christianity in the land. The teaching of Christianity constitutionally has no right in our public schools, or in any of our public institutions.

THE CONSTITUTION OF THE UNITED STATES.¹

Sept. 17, 1787.

ADOPTED IN THE CONSTITUTIONAL CONVENTION, SEPTEMBER 17, 1787.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Preamble.

No religious test shall ever be required as a qualification to any office or public trust under the United States.²

No religious test ever to be required.

¹ "United States Statutes at Large," volume i, page 10.

² Justice Joseph Story in his Commentaries on the "Constitution of the United States," page 690 *et seq.*, says:

"This clause is not introduced merely for the purpose of satisfying the scruples of many respectable persons who feel an invincible repugnance to any religious test or affirmation. It had a higher object: to cut off forever every pretense of any alliance between church and state in the national government. The framers of the Constitution were fully sensible of the dangers from this source, marked out in the history of other ages and countries, and not wholly unknown to our own. They knew that bigotry was unceasingly vigilant in its stratagems to secure to itself an exclusive ascendancy over the human mind, and that intolerance was ever ready to arm itself with all the terrors of the civil power to exterminate those who doubted its dogmas or resisted its infallibility. The Catholic and Protestant had alternately waged the most ferocious and unrelenting warfare on each other, and Protestantism, at the very moment when it was proclaiming the right of private judgment, prescribed boundaries to that right, beyond which if any one dared to pass, he must seal his rashness with the blood of martyrdom. The history of the parent country, too, could not fail to instruct them in the uses and the abuses of religious tests. They there found the pains and penalties of non-conformity written in no equivocal language, and enforced with a stern and vindictive jealousy."

Object of the clause.

All alliance with religion to be forever severed.

Tactics of both Catholic and Protestant

COMMENTS ON THE CONSTITUTION.

VIRGINIA CONVENTION.

The govern-
ment has not
a shadow of
right to inter-
meddle with
religion.

MR. MADISON: . . . *There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation.* I can appeal to my uniform conduct on this subject, that I have warmly supported religious freedom. It is better that this security should be depended upon from the general legislature, than from one particular State. A particular State might concur in one religious project.¹

Liberty the
direct end of
government.

Should be
guarded with
jealousy.

Cause of
England's
prosperity.

MR. HENRY: Mr. Chairman. . . . You are not to inquire how your trade may be increased, nor how you are to become a great and powerful people, but how your liberties can be secured; for liberty ought to be the direct end of your government. . . . Liberty—the greatest of all earthly blessings—give us that precious jewel, and you may take everything else! . . . Guard with jealous attention the public liberty. . . . We are descended from a people whose government was founded on liberty: our glorious forefathers of Great Britain made liberty the foundation of everything. That country is become a great, mighty, and splendid nation; not because their government is strong and energetic, but, sir, because liberty is its direct end and foundation. We drew the spirit of liberty from our British ancestors: by that spirit we have triumphed over every difficulty. . . . The great and direct end

¹ Elliot's "Debates on the Federal Constitution," volume iii, page 330. There were few objections urged so strongly against the proposed Constitution as that it did not sufficiently insure religious liberty.

of government is liberty. Secure our liberty and privileges, and the end of government is answered. If this be not effectually done, government is an evil.¹ . . .

Without liberty government is an evil.

NORTH CAROLINA CONVENTION.

MR. CALDWELL thought that some danger might arise. He imagined it² might be objected to in a political as well as in a religious view. In the first place, he said, there was an invitation for Jews and pagans of every kind to come among us. . . . I think, then, added he, that, in a political view, those gentlemen who formed this Constitution should not have given this invitation to Jews and heathens.³ . . .

Constitution an invitation to all to come among us.

MASSACHUSETTS CONVENTION.

REV. MR. BACKUS:⁴ Mr. President, I have said very little to this honorable convention; but I now

Speech of the Rev. Mr. Backus.

¹ Elliot's "Debates on the Federal Constitution," volume iii, pages 43 *et seq.*, 53 *et seq.*, 651.

² Article six of the Federal Constitution, providing that no religious test shall ever be required as a qualification to any office or public trust under the United States.

³ Elliot's "Debates on the Federal Constitution," volume iv, page 199. This speech of Mr. Caldwell shows in what light the Federal Constitution was regarded at the time of its adoption,—by its opponents as well as by its friends,—that it intended absolute equality, irrespective of religious belief or worship. This point was emphasized by the adoption of the first amendment to the Constitution. The idea that Christianity, or any other religion, was intended to be either favored or discountenanced, was entirely foreign to the intentions of the framers of our government. Such charges are the gratuitous inventions of the opponents of the absolute religious equality provided for by the Constitution—persons who desire to have *their* religious belief, Christianity, or its institutions, *forced upon others*. How different would be their tone if it was some other person's religion that was being attempted to be forced on them!

Intention of Constitution.

A difference in the person.

⁴ Rev. Mr. Isaac Backus was the author of the "History of New England" (three volumes), published 1777-1796; and, as "Appleton's

Thoughts on
religious tests.

Christian-
ity's first
usurpation.

Effect.

A character-
istic Protestant
argument.

An earnest
advocate of the
utmost relig-
ious freedom.

Not a con-
flict between
religion and
irreligion.

Wisdom
manifested.

beg leave to offer a few thoughts upon some points in the Constitution proposed to us, and I shall begin with the exclusion of any religious test. Many appear to be much concerned about it ; but nothing is more evident, both in reason and the Holy Scriptures, than that religion is ever a matter between God and individuals ; and, therefore, no man or men can impose any religious test without invading the essential prerogatives of our Lord Jesus Christ. Ministers first assumed this power under the Christian name ; and then Constantine approved of the practice, when he adopted the profession of Christianity as an engine of state policy. And let the history of all nations be searched from that day to this, and it will appear that the imposing of religious tests has been the greatest engine of tyranny in the world. And I rejoice to see so many gentlemen who are now giving in their rights of conscience in this great and important matter. Some serious minds discover a concern lest if all religious test should be excluded, the Congress would hereafter establish popery or some other tyrannical way of worship. But it is most certain that no such way of worship can be established without any religious test.¹ . . .

Cyclopedia of American Biography" says, "Throughout his life he was an *earnest and consistent advocate of the utmost religious freedom.*" He was one of the many early liberal ministers who worked heart and hand with the statesmen of the times to sever for the first time in the world's history the connection which had so long existed between religion and the powers of earth. It was not a conflict between religion and irreligion, nor between Christianity and infidelity ; but it was a conflict between free-churchism and state-churchism, between the liberty of the gospel and the superstition of heathenism, between human rights and the usurpations of ecclesiastics, and Dr. Backus and many other clergymen of the same stamp took the side of liberty, of humanity, and of the gospel of Christ. And upward of a century of unexampled prosperity by both the state and the church attests to the wisdom of their course.

¹ Elliot's "Debates on the Federal Constitution," volume ii, pages 148, 149.

PROPOSED AMENDMENTS TO THE CONSTITUTION.

NEW YORK CONVENTION.

Sept. 17, 1787.

That the people have an equal, natural, and unalienable right freely and peaceably to exercise their religion according to the dictates of conscience ; and that no religious sect or society ought to be favored or established by law in preference to others.¹

All equally entitled to the free exercise of religion.

Religious preferences wrong.

PENNSYLVANIA CONVENTION.

Dec. 12, 1787.

The right of conscience shall be held inviolable, and neither the legislative, executive, nor judicial powers of the United States shall have authority to alter, abrogate, or infringe any part of the Constitutions of the several States, which provide for the preservation of liberty in matters of religion.²

The right of conscience to be held inviolable.

NEW HAMPSHIRE CONVENTION.

June 21, 1788.

Congress shall make no laws touching religion, or to infringe the rights of conscience.³

No laws touching religion.

¹ Elliot's "Debates on the Federal Constitution," volume i, page 328.

² In Pennsylvania, the minority of the convention issued an address entitled, "Reasons of Dissent," etc., in which several amendments were proposed, the first of which was the above. The "Reasons of Dissent" were published, Philadelphia, December 12, 1787, and reprinted in Carey's "American Museum," volume ii, number 5, pages 536-553 ; quoted by Schaff in "Church and State in the United States," page 31.

³ Elliot's "Debates on the Federal Constitution," volume i, page 326.

June 27, 1788.

VIRGINIA CONVENTION.

Natural
rights inalien-
able.

That there are certain natural rights, of which men, when they form a social compact, cannot deprive or divest their posterity ; among which are the enjoyment of life and liberty, with the means of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.

All power
vested in the
people.

That all power is naturally invested in, and consequently derived from, the people ; that magistrates are therefore their *trustees* and *agents*, at all times amenable to them.

Magistrates
their trustees.

Religion can
be directed
only by reason,
not by force.

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence ; and, therefore, all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established by law in preference to others.¹

Religious
preferences
wrong.

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Aug. 1, 1788.

NORTH CAROLINA CONVENTION.

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Religion can
be directed
only by reason,
not by force.

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence ; and, therefore, all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience ; and that no particular religious sect or society ought to be favored or established by law in preference to others.²

Religious
preferences
wrong.

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¹ Elliot's "Debates on the Federal Constitution," volume iii, page 659.

² Elliot's "Debates on the Federal Constitution," volume iv, pages 242, 244. This amendment was among twenty others proposed in

RHODE ISLAND CONVENTION.

May 29, 1790.

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, and not by force and violence; and, therefore, all men have a natural, equal, and unalienable right to the exercise of religion according to the dictates of conscience; and that no particular religious sect or society ought to be favored or established by law in preference to others.¹

Religion can be directed only by reason, not by force.

Religious preferences wrong.

NATIONAL HOUSE OF REPRESENTATIVES.

Aug. 14, 1876.

No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no money raised by school taxation in any State, for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect; nor shall any money so raised, or lands so devoted, be divided between religious sects or denominations.²

States forbidden to interfere with free exercise of religion.

State money not to be put to religious uses.

the Convention of North Carolina as a "Declaration of Rights," the wording being substantially the same as the one proposed by Virginia.

¹ Elliot's "Debates on the Federal Constitution," volume i, page 334.

² On December 14, 1875, the Hon. James G. Blaine proposed the above amendment to the Constitution. It was not acted upon, however, until the succeeding Congress, when, on August 14, 1876, it was passed with the almost unanimous vote of "Yeas, 180," to "Nays, 7." When the amendment came up for action in the House, the Judiciary Committee added the following: "This article shall not vest, enlarge, or diminish legislative power in Congress." When introduced into the Senate, it was further amended, but failed to secure the necessary two-thirds vote in its favor, the vote standing, "Yeas, 28," to "Nays, 16." Both of the great political parties that year inserted in their platforms resolutions on the subject of religious freedom, the Democratic party declaring: "We do here re-affirm . . . our faith in the total separation of church and state, for the sake alike of civil and religious freedom."

The Blaine amendment.

Its favorable reception.

AMENDMENTS TO THE CONSTITUTION.

Sept. 25, 1789.

ARTICLE I.

Limitations
on Congress.

Congress shall make no law respecting an establishment of religion,¹ or prohibiting the free exercise

Meaning of
"religion."

¹Chief Justice Waite, who delivered the opinion of the Supreme Court of the United States, in the case of *Reynolds v. United States*, in 1878, said: "The word 'religion' is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in the midst of which the provision was adopted." This, most certainly, is the only way in which we can obtain the correct meaning of the word. And as the subject was a live question when the Federal Constitution was adopted, the documents of the times furnish us an accurate idea of the meaning intended by the use of the word "religion."

In the Virginia "Declaration of Rights," adopted June 12, 1776, it is incidentally defined in the sixteenth section:

It is the duty
that we owe to
our Creator.

"That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other."

Identically the same definition was given to the word in the proposed amendments guaranteeing religious rights in the Federal Constitution, by the State conventions of Virginia, North Carolina, and Rhode Island. In the Virginia "Memorial and Remonstrance," written by Madison, it was distinctly stated that they meant religious equality to extend to *all beliefs*—not alone to sects of the Christian religion. They said: "Who does not see that the same authority which can establish Christianity in exclusion of all other religions, may establish with the same ease, any particular sect of Christians, in exclusion of all other sects?" And yet religious partisans resort to all kinds of subterfuges in their attempts to make it appear in some way or other that the Christian religion is a part of our common law, its institutions are entitled to especial regard by the government, etc., *ad infinitum*. Madison emphasized the idea of absolute religious equality for all in the religious amendment which he originally proposed, among nine others, to incorporate in the body of the Constitution, instead of in separate articles as they were finally adopted. His proposed amendment was as follows:

"Religion"
intended to
include all sys-
tems of belief.Subterfuges
of religious
partisans.Madison
emphasizes
his idea of
absolute relig-
ious liberty.

"Fourthly, That in article first, section nine, between clauses three and four, be inserted these clauses, to wit: *The civil rights of none shall*

thereof; or abridging the freedom of speech¹ or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Freedom of speech.

be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed." "Annals of Congress," page 434.

No national religion to be established.

From the above quotations it will be seen that the word "religion" was used in its broadest sense. And, as Schaff says: "This is much more than freedom of religious *opinions*; for this exists everywhere, even under the most despotic governments, and is beyond the reach of law, which deals only with overt actions. Freedom of exercise includes public worship, acts of discipline, and every legitimate manifestation of religion." "Church and State in the United States," page 35. The framers of our government intended to separate absolutely and forever all connection between civil government and religion; but as years roll by, and the spirit of liberty that was so prominent a characteristic of the American people then, fades from the American mind, we see a revival of the demands for Sunday laws and their enforcement, and calls for the recognition of the Christian religion in our public documents. But as long as the integrity of the Federal Constitution is preserved, no such laws can be enacted by the government of the United States of America. And any right that an individual has as a citizen of the United States, no State is allowed to abridge; for, according to the fourteenth amendment, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

"Religion" a generic term.

Complete separation of religion and state intended.

Religious laws inconsistent with the Constitution.

¹ Herbert Spencer, commenting on the right of free speech, says:

"The utterance of thought being one species of action, there arises from the proposition that every man is free within specified bounds to do what he wills, the self-evident corollary, that, with the like qualification, he is free to *say* what he wills; or, in other words, as the rights of his fellow-men form the only legitimate restraint upon his deeds, so, likewise, do they form the only legitimate restraint upon his words.

Man has the right to say what he wills.

"There are two modes in which speech may exceed the ordained limits. It may be used for the propagation of slander, which, as we have seen in a foregoing chapter, involves a disregard of moral obligation; or it may be used in inciting and directing another to injure a third party. In this last case, the instigator, although not personally concerned in the trespass proposed by him, must be considered as having virtually committed it. We should not exonerate an assassin who pretended that his dagger was guilty of the murder laid to his charge,

Limitations on speech.

Sept. 25, 1789.

ARTICLE IX.

Other rights
of the people.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.¹

Incitation to
crime is criminal.The inciter
equally guilty
with incited.

rather than himself. We should reply, that the having moved a dagger with the intention of taking away life, constituted his crime. Following up the idea, we must also assert that he who, by bribes or persuasion, moved the man who moved the dagger, is equally guilty with his agent. He had just the same intention, and similarly used means for its fulfilment; the only difference being that he produced death through a more complicated mechanism. As, however, no one will argue that the interposing of an additional lever between a motive force and its ultimate effect, alters the relationship between the two, so neither can it be said that he who gets a wrong done by proxy, is less guilty than if he had done it himself. Hence, whoso suggests or urges the infringement of another's rights, must be held to have transgressed the law of equal freedom.

Extent of
the liberty of
speech.

"Liberty of speech, then, like liberty of action, may be claimed by each, to the fullest extent compatible with the equal rights of all. Exceeding the limits thus arising, it becomes immoral. Within them, no restraint of it is permissible." "Social Statics," chapter 14, section 1.

¹In his philosophical argument upon the self-evidence of inherent natural rights, Herbert Spencer says:

Instinct
of personal
rights.

"There exists in man what may be termed an *instinct of personal rights*—a feeling that leads him to claim as great a share of natural privilege as is claimed by others—a feeling that leads him to repel anything like an encroachment upon what he thinks his sphere of original freedom. By virtue of this impulse, individuals, as units of the social mass, tend to assume like relationships with the atoms of matter, surrounded as these are by their respective atmospheres of *repulsion* as well as of attraction. And perhaps social stability may ultimately be seen to depend upon the due balance of these forces.

Effect of
this instinct.

"There exists, however, a dominant sect of so-called philosophical politicians, who treat with contempt this belief that men have any claims antecedent to those indorsed by governments. As disciples of Bentham, consistency requires them to do this. Accordingly, although it does violence to their secret perceptions, they boldly deny the existence of 'rights' entirely. They nevertheless perpetually betray a belief in the doctrines which they professedly reject. They inadvertently talk about *justice*, especially when it concerns themselves, in much the same style as their opponents. They draw the same distinction between *law* and *equity* that other people do. They applaud *fairness* and *honor*,

Idea of personal
rights treated
with contempt.Belief in the
doctrine perpetually
betrayed.

ARTICLE XIV.

June 16, 1866.

SECTION I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State in which they reside. *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States*; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

No State to
abridge rights
of national
citizens.

quite as if they thought them something more than mere words. And when robbed, or assaulted, or wrongly imprisoned, they exhibit the same indignation, the same determination to oppose the aggressor, utter the same denunciations of tyranny, and the same loud demands for redress, as the sternest assertors of the rights of man. By way of explaining such inconsistencies, it is indeed alleged, that the feeling thus manifested is nothing but the result of a gradually-acquired conviction that benefits flow from some kinds of action, and evils from other kinds; and it is said that the sympathies and antipathies respectively contracted toward these, exhibit themselves as a love of justice, and a hatred of injustice. To which supposition it was by implication elsewhere replied, that it would be equally wise to conclude that hunger springs from a conviction of the benefit of eating; or that love of offspring is the result of a wish to maintain the species!

When they
are wronged,
they assert
their rights.

“But it is amusing when, after all, it turns out that the ground on which these philosophers have taken their stand, and from which with such self-complacency they shower their sarcasms, is nothing but an adversary’s mine, destined to blow the vast fabric of conclusions they have based on it into nonentity. This so solid-looking principle of ‘the greatest happiness to the greatest number,’ needs but to have a light brought near it, and lo! it explodes into the astounding assertion, that all men have equal rights to happiness—an assertion far more sweeping and revolutionary than any of those which are assailed with so much scorn.

Ludicrous-
ness of the po-
sition of these
philosophers.

“When we see, then, that an instinct of personal rights manifests itself unceasingly in opinions and institutions; when further we find that the attempt to trace the monitions of this instinct to experience, betrays us into an absurdity; and when, lastly, the dogma of those who most sturdily deny that there is such an instinct, proves to be only another emanation from it, we find ourselves in possession of

Conclusion
of the argu-
ment.

5TH CONGRESS]

[1ST SESSION

May 26, 1797.

TREATY OF PEACE AND FRIENDSHIP

BETWEEN THE UNITED STATES OF AMERICA AND
THE BEY AND SUBJECTS OF TRIPOLI,
OF BARBARY.¹

COMMUNICATED TO THE SENATE, MAY 26, 1797.

Our govern-
ment not
founded on
Christianity.

No enmity
towards the
Mahometan
religion.

ARTICLE II. *As the government of the United States of America is not, in any sense, founded on the Christian religion,*² as it has in itself no character of enmity against the laws, religion, or tranquillity, of Mussulmans; and, as the said States never entered into any war, or act of hostility against any Mahom-

the strongest possible evidence of its existence—the testimony of all parties. We are therefore justified in considering that existence as sufficiently proved.” “Social Statics,” chapter 3, sections 2, 3.

¹ “American State Papers,” Class I, Foreign Relations, volume ii, page 18; “United States Statutes at Large,” volume viii, Foreign Treaties, page 154. According to article six of the Constitution of the United States, “All treaties made, or which shall be made, under the authority of the United States, *shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.*” Whenever a right grows out of, or is protected by, a treaty, it is sanctioned against all the laws and judicial decisions of the States; and whoever may have the right under any treaty, it is to be protected. *Owings v. Norwood's Lessee*, 5 Cranch, 344. Treaties are sometimes regarded as administrative measures, rather than measures of the government as a whole, being carried into execution by the sovereign power of the respective parties to the instrument. According to a decision of the United States Supreme Court, however, we do not so regard them. In *Foster and Elam v. Neilson*, 2 Pet. 314, Chief Justice Marshall declared: “In the United States a different principle is established. Our Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision.”

Treaties the
supreme law
of the land.

Not merely
administrative
measures.

Treaties
must be re-
garded in all
courts.

Framing
of the treaty.

² Dr. Philip Schaff, of the Union Theological Seminary, New York, says that he learns “from Dr. Francis Wharton that the treaty was framed by an ex-Congregational clergyman.” “Church and State in

etan nation, it is declared by the parties, that no pretext, arising from religious opinions, shall ever produce an interruption of the harmony existing between the two countries.

No religious pretext to interrupt existing harmony.

the United States," page 41, note 2. So there was no antagonism or disrespect to the Christian religion intended; nor do the words convey any such impression to the unbiased mind. It is simply a plain and unequivocal statement, though negative in form, of the absolute equality, as far as our government is concerned, of other religions with the Christian religion. "*It is not the legitimate province of the legislature,*" as the United States Senate declared, "*to determine what religion is true, or what false.*" All are entitled to an impartial protection from the government; and it is entirely foreign to its sphere to inquire when, how, why, or where a person worships or does not worship. The declaration in the treaty is declarative of American institutions as understood by the statesmen founding them, and by the people at that time.

Not the province of the legislature to determine religious questions.

Entirely foreign to its sphere.

The writings of Thomas Jefferson, James Madison, and others, also furnish conclusive proof on this point. Speaking of the Virginia "Act for establishing religious freedom," Jefferson, in his "Autobiography," gives the following, which is of interest in this connection:

"The bill for establishing religious freedom, the principles of which had, to a certain degree, been enacted before, I had drawn in all the latitude of reason and right. It still met with opposition; but, with some mutilations in the preamble, it was finally passed; and a singular proposition proved that *its protection of opinion was meant to be universal*. Where the preamble declares that coercion is a departure from the plan of the holy Author of our religion, an amendment was proposed by inserting the word 'Jesus Christ,' so that it should read, 'a departure from the plan of Jesus Christ, the holy Author of our religion;' *the insertion was rejected by a great majority*, in proof that they meant to comprehend, within the mantle of its protection, *the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and infidel of every denomination.*" "Works of Thomas Jefferson," volume i, page 45.

Jefferson's bill establishing religious freedom.

Protection of opinion meant to be universal.

Embraces every shade of belief.

And Madison, in his celebrated "Memorial and Remonstrance" of 1785, ante page 30, says: "*Who does not see that the same authority which can establish Christianity, in exclusion of all other religions, may establish, with the same ease, any particular sect of Christians, to the exclusion of all other sects?*"

If a system of religion can be established, then also can some sect.

The treaty was made under the administration of George Washington, and was signed and sealed at Tripoli on the fourth day of November, 1796, and at Algiers, the third day of January, 1797, by Hassan Bashaw, Dey of Algiers, and Joel Barlow, Consul-General of the United States.

Jan. 23, 1808.

RELIGIOUS PROCLAMATIONS UNCONSTITUTIONAL.

WRITTEN BY THOMAS JEFFERSON TO THE REV. MR. MILLAR.¹

WASHINGTON, January 23, 1808.

SIR: I have duly received your favor of the eighteenth, and am thankful to you for having written it, because it is more agreeable to prevent than to refuse what I do not think myself authorized to comply with. I consider the government of the United States *as interdicted by the Constitution from intermeddling with religious institutions, their doctrines, discipline, or exercises.*² This results not only from the provision that no law shall be made respecting the establishment or free exercise of religion, but from that, also, which reserves to the States the powers not delegated to the United States. Certainly, no power to prescribe any religious exercise, or to assume authority in religious discipline, has been delegated to the general government. It must, then, rest with the States, as far as it can be in any human authority. But it is only

Constitution
interdicts in-
termeddling
with religion.

No such
power dele-
gated.

¹ "Works of Thomas Jefferson," volume v, pages 236, 237.

Jefferson re-
fused to pro-
claim festivals.

Alliance be-
tween church
and state con-
demned.

² In harmony with the principle here laid down, Jefferson refused to proclaim any fasts or festivals. In a letter to Mr. Lincoln, dated January 1, 1802, he said: "The Baptist address, now inclosed, admits of a condemnation of the alliance between church and state, under the authority of the Constitution. It furnishes an occasion, too, which I have long wished to find, of saying why I do not proclaim fastings and thanksgivings, as my predecessors did. The address, to be sure, does not point at this, and its introduction is awkward. But I foresee no opportunity of doing it more pertinently. I know it will give great offense to the New England clergy; but the advocate of religious freedom is to expect neither peace nor forgiveness from them." "Works of Thomas Jefferson," volume iv, page 427. Madison, also, considered the enjoining of fasts and festivals as an unwarranted assumption on the part of the chief executive.

proposed that I should *recommend*, not prescribe, a day of fasting and prayer. That is, that I should *indirectly* assume to the United States an authority over religious exercises, *which the Constitution has directly precluded them from*. It must be meant, too, that this recommendation is to carry some authority, and to be sanctioned by some penalty on those who disregard it; not, indeed, of fine and imprisonment, but of some degree of proscription, perhaps in public opinion. And does the change in the nature of the penalty make the recommendation less a *law* of conduct for those to whom it is directed? I do not believe it is for the interest of religion to invite the civil magistrate to direct its exercises, its discipline, or its doctrines; nor of the religious societies, that the general government should be invested with the power of effecting any uniformity of time or matter among them. Fasting and prayer are religious exercises; the enjoining them, an act of discipline. Every religious society has a right to determine for itself the times for these exercises, and the objects proper for them, according to their own particular tenets; and this right can never be safer than in their own hands, *where the Constitution has deposited it*.¹

Jefferson's answer to sophistry.

Prescribing religious observances directly prohibited by Constitution.

Nor is it for the interest of religion.

Fasting and prayer religious exercises.

Should be left where deposited by the Constitution.

¹ This was a characteristic of President Jefferson. He was ever jealous of the rights of the people, and was particularly careful not to abridge or encroach in any way upon those rights. It was on account of this jealousy that he felt disappointed when he found that the Constitutional Convention at Philadelphia had omitted a declaration of rights in the new Federal Constitution; and he and Madison were mainly instrumental in securing the first ten amendments which now stand as a part of that instrument. And, now, after having secured the first amendment, among the others, he was desirous of having it strictly carried out — not to have it stand as a dead letter; he was desirous that it might fulfil the ends for which it was adopted — to separate entirely and forever every connection between religion and the state in the United States of America.

A characteristic of Jefferson.

His jealousy for rights of people.

Anxiety to preserve integrity of Constitution.

Object of first amendment.

11TH CONGRESS]

[2D SESSION

April 30, 1810.

AN ACT

REGULATING THE POST-OFFICE ESTABLISHMENT.¹

ENACTED APRIL 30, 1810.

Post-offices
to be kept
open on every
day on which
mail arrives.

SECTION 9. *And be it further enacted*, That every postmaster shall keep an office in which one or more persons shall attend on every day on which a mail, or bag, or other packet, or parcel of letters shall arrive by land or water, as well as on other days, at such hours as the Postmaster-General shall direct, for the purpose of performing the duties thereof; and it shall be the duty of the postmaster at all reasonable hours, *on every day of the week*, to deliver, on demand, any letter, paper, or packet, to the person entitled to or authorized to receive the same.

Postmaster
to deliver mail
on every day
of the week.

11TH CONGRESS]

[3D SESSION

PETITIONS

IN REFERENCE TO SUNDAY MAILS.

Jan. 4, 1811.

FRIDAY, JANUARY 4.²

Petition pre-
sented against
Sunday mails.

Mr. Findley presented a petition of the Synod of Pittsburg, in the State of Pennsylvania, praying that the laws and regulations for the government of the Post-office Establishment may be so altered or amended as to prohibit mail stages and post riders from traveling, and post-offices being kept open, on Sunday.

Referred.

Referred to the Postmaster-General.

¹ "United States Statutes at Large," volume ii, page 592. This act was repealed March 3, 1825, by an act entitled "An act to reduce into one the several acts establishing and regulating the Post-office Department." The above section, however, was reënacted.

² "Annals of Congress," page 487.

FRIDAY, JANUARY 18.

Jan. 18, 1811.

Similar petitions presented and referred to the Postmaster-General.

Petitions presented and referred.

FRIDAY, JANUARY 25.

Jan. 25, 1811.

Mr. John Porter presented a petition of sundry inhabitants of Philadelphia, to the same effect with the petition of the Synod of Pittsburg, presented on the fourth instant ; which was read.

Petition presented and read.

THURSDAY, JANUARY 31.²

Jan. 31, 1811.

The Speaker laid before the House a report from the Postmaster-General,³ on the petitions of the Synod of Pittsburg, and of sundry inhabitants of the western country, in the States of Pennsylvania, Virginia, and Ohio, referred on the fourth and eighteenth instant ; which was read, and referred to the Committee on Post-offices and Post-roads, to report specially by bill or otherwise.

Report on petitions read and referred.

11TH CONGRESS]

[3D SESSION

REMONSTRANCE

AGAINST THE DELIVERY OF LETTERS, PAPERS,
AND PACKETS, AT THE POST-OFFICE
ON THE SABBATH.⁴

COMMUNICATED TO THE HOUSE OF REPRESENTATIVES, JANUARY 31, 1811. Jan. 31, 1811.

The Postmaster-General, in obedience to the resolutions⁵ of the House of Representatives of the United States, passed on the fourth and eighteenth of the present month, respectfully reports :

Report of Postmaster-General.

¹ "Annals of Congress," pages 826, 827.

² "Annals of Congress," page 855.

³ The report given herewith.

⁴ "American State Papers," Class VII, pages 44, 45.

⁵ Referring to him two memorials, from sundry citizens of Philadelphia and elsewhere, substantially similar, an extract from the first of which follows this report.

The act of 1810 required the receipt and delivery of letters by the post-offices on Sunday.

Instruction of Postmaster-General.

Doubt as to whether he was warranted in limiting time to one hour.

Judgment of postmasters considered a sufficient guarantee for the delivery of letters.

That, under and by virtue of the ninth section of the act of the thirtieth of April, 1810, the Postmaster-General conceived himself bound to compel the postmasters to receive letters from, and deliver letters to, the citizens, on the Sabbath day; and in conformity to that act, the following instruction was given to the postmasters, to wit:

“At post-offices where the mail arrives on Sunday, the office is to be kept open for the delivery of letters, etc., for one hour after the arrival and assorting of the mail; but in case that would interfere with the hours of public worship, then the office is to be kept open for one hour after the usual time of dissolving the meetings, for that purpose.”

The Postmaster-General further remarks, that from the peculiar phraseology of the ninth section of said act, it is doubted whether he be warranted by law in limiting the right of the citizens to demand their letters to one hour on the Sabbath; and, in one instance, in Pennsylvania, an officer has been prosecuted, under the section aforesaid, for refusing to deliver a letter on the Sabbath, not called for within the time prescribed by this office. Although in cases of extreme anxiety or national calamity, it may be proper for postmasters to open their offices for the reception and delivery of letters on the Sabbath, and particularly to the officers of government, still it is believed that the good sense of the officers is a sufficient safeguard for the delivery of letters under all such circumstances; and that compelling the postmasters to attend to the duties of the office on the Sabbath, is on them a hardship, as well as in itself tending to bring into disuse and disrepute the institutions of that holy day.

GIDEON GRANGER,

Postmaster-General.

General Post-office, January 30, 1811.

MEMORIAL AND PETITION.

To the Honorable, the Senate and House of Representatives of the United States, in Congress, the memorial, representation, and petition of the undersigned citizens, resident in Philadelphia, respectfully represents:

Your memorialists cannot, in justice to their own feelings, refrain from observing that the violation of known and universally received precepts, when sanctioned by the most powerful influence in the Union, cannot fail of having a tendency to justify every species of breach of the laws made for the strict observance of the first day of the week, as set apart by the command of God for his more immediate service.¹

Religious views prompt the complaint.

Tendency of Sunday mails to lesson regard for the day which the petitioners regard as holy.

They do, therefore, most respectfully and earnestly petition your honorable body, that the said ninth section of the act, entitled, "An act regulating the Post-office Establishment," and passed the twenty-fifth of April last, may be so amended as to prohibit the delivery of letters, papers; and packets, on the first day of the week, commonly called the Lord's day. And your petitioners, as in duty bound, will ever pray.

Prohibition of the delivery of mail asked for on the Lord's day.

JAMES P. WILSON, and others.

¹ This is the real foundation of all Sunday-rest movements; though for clandestine purposes, reasons are often given of a very different nature, as, solicitude for the public health,—as though the people were so devoid of common sense as not to know enough to rest when they are tired, without being compelled to do so by law! Mr. Chief Justice Rufin, of the Supreme Court of North Carolina, in the case of the State *v.* Williams, 4 Iredell, 403, said: "The truth is, that it offends us, not so much because it disturbs us in practising for ourselves the religious duties, or enjoying the salutary repose or recreation, of that day, as that it is, in itself, a breach of God's law, and a violation of the party's own religious duty." Sabbath laws are the remnants of religious legislation; and it was only to appear to escape the force of incontrovertible arguments that such a shallow subterfuge as the "civil" Sabbath was invented.

Basis of all Sunday-rest movements.

Sunday prosecutions the result of religious feelings.

A shallow subterfuge.

12TH CONGRESS]

[1ST SESSION

Jan. 3, 1812.

SUNDAY MAILS.¹

COMMUNICATED TO THE HOUSE OF REPRESENTATIVES, JANUARY 3, 1812.

Mr. Rhea² made the following report :

House committee reports.

The Committee on Post-offices and Post-roads, to whom were referred the petition of the Synod of Presbyters and other citizens of Christian denominations, residing in the western parts of the United States, and the report of the Postmaster-General thereon, have had the same under consideration, and do respectfully report :

Report.

That however desirable it would be to advise the adoption of such regulations, relative to the carrying and opening of the mail, as might meet the views of the venerable Synod of Pittsburg, and the other petitioners, your committee cannot, at this peculiar crisis of the United States, recommend any alterations in the law regulating the Post-office Establishment ; and do respectfully submit the following resolution :

Committee cannot recommend any alteration in the law.

Petitioners requested to withdraw petitions.

Resolved, That the petitioners have leave to withdraw their petitions.

Resolution concurred in.

The resolution was concurred in.³¹ " American State Papers," Class VII, page 45.² Chairman of the Committee on Post-offices and Post-roads.

The Sunday-mail reports of 1810-1830.

³ This was the first of a series of adverse reports on this question of the discontinuance of Sunday mails. As the petitions increased and the demands of the clergy became more strenuous, the adverse reports were more decided. Again and again they refused to run the government according to the dictates of the ecclesiastical power ; and, finally, when the question had become one of national interest, adverse petitions also coming in, and the best statesmen of the times opposing the " reform " movement, Senator Johnson wrote his celebrated reports which have received such general approbation. These reports were so well written and treated the subject so thoroughly that the movement was killed. Senator Johnson took pride in continuing the movement for complete religious freedom initiated by the founders of our government. Subsequently his popularity made him Vice-President of the United States.

Senator Johnson's reports.

12TH CONGRESS]

[1ST SESSION

SUNDAY MAILS.¹

June 15, 1812.

COMMUNICATED TO THE HOUSE OF REPRESENTATIVES, JUNE 15, 1812.

Mr. Rhea made the following report :

House com-
mittee reports.

The Committee on Post-offices and Post-roads, to whom was referred the memorial of the General Assembly of the Presbyterian Church in the United States of America, have had the same under consideration, and do respectfully report :

That, heretofore, during the present session of Congress, petitions of the Synod of Presbyters, and other citizens of several Christian denominations, residing in the western part of the United States, were referred to the Committee on Post-offices and Post-roads ; that the prayers of the said petitions were, in their object, design, and end, similar to that of the memorial of the said reverend General Assembly ; that your committee, after having had the aforesaid petitions under consideration, reported thereon on the third day of January last past :

Report.

Petitions
similar to pre-
vious ones.

“ That, however desirable it would be to advise the adoption of such regulations, relative to the carrying and opening of the mail, as might meet the views of the venerable Synod of Pittsburg, and the other petitioners, your committee cannot, at this peculiar crisis of the United States, recommend any alterations in the law regulating the Post-office Establishment, and do respectfully submit the following resolution :

Previous re-
port.

Committee
cannot recom-
mend any al-
teration in the
law.

“ *Resolved*, That the petitioners have leave to withdraw their petitions.”

Petitioners
requested to
withdraw
petitions.

And the same resolution was afterwards concurred in.

Resolution
concurred in.

¹ “ American State Papers,” Class X, volume ii, page 194.

No reason
for changing
the report.

Your committee further report, that there doth not appear any reason to induce a change or alteration of the report made in the case of the petition of the venerable Synod of Pittsburg; nor hath any reason occurred to induce your committee to report on the memorial now under consideration, different from the report on that petition; they do, therefore, respectfully submit the following resolution:

Memori-
alists re-
quested to
withdraw their
memorial.

Resolved, That the memorialists have leave to withdraw their memorial.

All which is respectfully submitted.

13TH CONGRESS]

[3D SESSION

Jan. 20, 1815.

SUNDAY MAILS.¹

COMMUNICATED TO THE HOUSE OF REPRESENTATIVES, JANUARY 20, 1815.

Report of
House com-
mittee.

Mr. Rhea, from the Committee on the Post-offices and Post-roads, to whom were referred sundry petitions and memorials remonstrating against the usage of transporting and opening the mail on the Sabbath, and the report of the Postmaster-General relating thereto, reported:

Question of
great national
importance.

Inexpedient
to discontinue
Sunday mail
service.

That they have had the same under consideration, and deeming it of great national importance, particularly in time of war, that no delay should attend the transportation of the mail, they deem it inexpedient to interfere with the present arrangement of the Post-office Establishment, and, therefore, submit the following resolution:

Resolved, That it is inexpedient to grant the prayer of the petitioners.

¹ "American State Papers," Class VII, page 46. The report was read and referred to a Committee of the Whole, and considered by them on Friday, February 10, 1815. See "Annals of Congress," pages 1084, 1186. The minutes of its consideration in the Committee of the Whole are inserted herein, *post* pages 67, 68.

REPORT OF POSTMASTER-GENERAL.

Jan. 16, 1815.

GENERAL POST-OFFICE, January 16, 1815.

SIR: The Postmaster-General, to whom were referred sundry memorials against the usage of transporting and opening the mails on the Sabbath, has the honor to report the following facts and observations:

Report of
Postmaster-
General.

The usage of transporting the mails on the Sabbath is coeval with the Constitution of the United States, and a prohibition of that usage will be first considered.

Sabbath
transportation
of mail coeval
with the Con-
stitution.

.
RETURN J. MEIGS, JUN.¹

To the Honorable, the Speaker of the House of Representatives.

13TH CONGRESS]

[3D SESSION

SUNDAY MAILS.²

Jan. 27, 1815. □

COMMUNICATED TO THE SENATE, JANUARY 27, 1815.

Mr. Daggett made the following report:

The committee of the Senate, to whom were referred the petitions of numerous citizens of the States of New Hampshire, Massachusetts, Connecticut, North Carolina, and Ohio, praying the Congress to prohibit the transportation and opening of the mail on the Sabbath, having attended to the duty assigned to them, respectfully report:

Report of
the Senate
committee.

That the importance of the subject, and the motives which actuate so large a portion of their fellow-citizens, are duly regarded and appreciated. Was the practice of the transportation of the mail on every day of the week now commenced, and that of

Subject an
important one.

Not a new
practice.

¹ Postmaster-General.

² "American State Papers," Class VII, page 47.

Opinion of
committee.

opening it on the Sabbath under no regulations, the committee would consider it necessary to make some legislative provision on the subject.

Sabbath
transportation
of the mail
has been
carried on
ever since the
establishment
of the govern-
ment.

The general government from its establishment has pursued a system of causing the mail to be transported on the Sabbath, on the great roads leading through and across the country, while the practice has been avoided on routes of less importance. The public convenience has justified these measures in the view of the government. In 1810, a law was made, directing "that every postmaster shall keep an office, in which one or more persons shall attend on every day on which a mail, or bag, or other packet or parcel of letters shall arrive, by land or water, as well as on other days, at such hours as the Postmaster-General shall direct, for performing the duties thereof; and it shall be the duty of the postmaster, at all reasonable hours, on every day of the week, to deliver on demand, any letter, paper, or packet, to the person entitled to or authorized to receive the same."

Public con-
venience has
justified it.

Post-offices
to be kept
open on every
day on which
mail arrives.

Postmaster
to deliver mail
on every day
of the week.

Committee
indorse regula-
tion concern-
ing Sunday
mails.

The committee learn with pleasure that the Postmaster-General, under this law, has prescribed the following regulation :

Instruction
of Postmaster-
General.

"At post-offices where the mail arrives on Sunday, the office is to be kept open for the delivery of letters, etc., for one hour after the arrival and assorting of the mail; but in case that would interfere with the hours of public worship, then the office is to be kept open for one hour after the usual time of dissolving the meetings, for that purpose."

Continuance
of regulation
desired.

Presuming that the Postmaster-General will continue this regulation, and that he will, at all times, guard the post-office against improper practices, in respect to the opening the mail and the delivering of letters on the Sabbath; and considering the condition of the country, engaged in war, rendering fre-

quent communication through the whole extent of it absolutely necessary, the committee deem it *inexpedient*, at this time, to interfere and pass any laws on the subject-matter of the petitions referred, and they, therefore, respectfully submit the following resolution :

It is deemed
inexpedient to
interfere with
the law.

Resolved, That, at this time, it is *inexpedient* to interfere and pass any laws on the subject-matter of the several petitions praying the prohibition of the transportation and opening of the mail on the Sabbath.

Petitions
refused.

13TH CONGRESS]

[3D SESSION

SUNDAY MAILS.¹

Feb. 10, 1815.

FRIDAY, FEBRUARY 10, 1815.

The House resolved itself into a Committee of the Whole, on the report of the Committee on Post-offices and Post-roads, that it is *inexpedient* to make any alteration in the present regulations respecting the transportation and opening the mails on the Sabbath.

Report
considered.

Mr. Farrow moved to amend the report so as to declare it *expedient*, instead of *inexpedient*, to grant the prayer of the petitioners. This motion was negatived without debate, and the committee rose and reported the resolution unamended to the House.

Amendment
proposed.

Mr. King, of Massachusetts, moved to lay the report on the table ; which motion, after debate, was negatived.

Resolution,
unamended,
reported to
House.
Motion to
table report,
negatived.

Mr. King then moved to add to the end of the resolution the words, "during the present war," so as to confine the resolve to the inexpediency of acting on the subject during the present war. The question on Mr. King's motion was decided in the negative.

Motion to
limit report,
negatived.

¹ "Annals of Congress," volume iii, page 1146.

Another
motion nega-
tived.

Mr. Stanford then moved to amend the resolution by adding thereto the following : "So far as respects the progress of the mail and the issuance of letters on the Sabbath ; but that the issuing of newspapers under the proper restrictions may be prohibited ;" which motion was negatived.

Resolution
adopted.

The question on concurring in the resolution reported by the committee, was then decided by yeas and nays. For the report, 81 ; against it, 41.

Petition
refused.

So it was resolved that it is inexpedient to grant the prayer of the petitioners.¹

Principles
of Williams.

¹ In refusing to grant the petition and thus to give preference to the Sunday-keeper over the Jew and Mahometan, the Senate did no more than to carry out the principles taught by Roger Williams nearly two hundred years before. In his "Letter to the People of Providence," A. D. 1655, he defines the limitations of governmental authority in a way which shows how far he was in advance of his times :

Illustration
of a common-
wealth.

"There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth or a human combination or society. It hath fallen out sometimes that both Papists and Protestants, Jews and Turks, may be embarked in one ship ; upon which supposal I affirm that all the liberty of conscience that ever I pleaded for turns upon these two hinges — that none of the Papists, Protestants, Jews, or Turks be forced to come to the ship's prayers or worship, nor compelled from their particular prayers or worship, if they practise any. I further add that I never denied that, notwithstanding this liberty, the commander of this ship ought to command the ship's course, yea, and also command that justice, peace, and sobriety be kept and practised, both among the seamen and all the passengers. If any of the seamen refuse to perform their services, or passengers to pay their freight ; if any refuse to help, in person or purse, toward the common charges or defense ; if any refuse to obey the common laws and orders of the ship, concerning their common peace or preservation ; if any shall mutiny and rise up against their commanders and officers ; if any should preach or write that there ought to be no commanders or officers, because all are equal in Christ, therefore no masters, nor officers, nor laws, nor orders, nor corrections, nor punishments ; — I say, I never denied, but in such cases, whatever is pretended, the commander or commanders may judge, resist, compel, and punish such transgressors, according to their deserts and merits. This, if seriously and honestly minded, may, if it so please the Father of lights, let in some light to such as willingly shut not their eyes."

Religious
rights.

Sphere of
government.

THE SPHERE OF CIVIL GOVERNMENT.

WRITTEN BY THOMAS JEFFERSON TO FRANCIS W. GILMER.¹

June 7, 1816.

MONTICELLO, June 7, 1816.

DEAR SIR: . . . Our legislators are not sufficiently apprised of the rightful limits of their power; that *their true office is to declare and enforce only our natural rights and duties, and to take none of them from us.*² No man has a natural right to commit

Office of the legislator.

Natural rights should not be taken away.

¹ "Works of Thomas Jefferson," volume vii, page 3.

² Blackstone, in section two of the introduction to his "Commentaries on the Laws of England," page 39 *et seq.*, states this principle as follows: "This will of his [man's] Maker is called the *law of nature*. . . . This law of nature, being coeval with mankind, and dictated by God himself, is of course *superior in obligation to any other*. *It is binding over all the globe, in all countries, and at all times. No human laws are of any validity if contrary to this; and such of them as are valid derive all their authority, mediately or immediately, from this original.*

Laws of nature.

Superior to all other laws.

All laws derive their validity from it.

"But in order to apply this to the particular exigencies of each individual, it is still necessary to have recourse to reason, whose office it is to discover, as was before observed, what the law of nature directs in every circumstance of life, by considering what method will tend the most effectually to our own substantial happiness. . . .

Reason its interpreter.

"*Those rights, then, which God and nature have established, and are therefore called natural rights, such as are life and liberty, need not the aid of human laws to be more effectually invested in every man than they are; neither do they receive any additional strength when declared by the municipal laws to be inviolable.*"

Natural rights ours without governmental sanction.

"Lord Chief Justice Hobart has also advanced that *even an act of Parliament made against natural justice, . . . is void of itself; for jura nature sunt immutabilia*, and they are *leges legum*." Chitty's notes.

Any act against natural justice void.

Upon the foregoing statement made by Blackstone, Herbert Spencer comments as follows: "'No human laws are of any validity if contrary to the law of nature; and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original.' Thus writes Blackstone, to whom let all honor be given for having so far outseen the ideas of his time; and, indeed, we may say of our time. A good antidote, this, for those political superstitions which so widely prevail; a good check upon that sentiment of power-worship which still misleads us by magnifying the prerogatives of constitutional governments as it once did those of monarchs. Let men learn that a legisla-

No human law contrary to the law of nature, valid.

Blackstone ahead of his time.

Sphere of
the law.

aggression on the equal rights of another ; and this is all from which the laws ought to restrain him ; every man is under the natural duty of contributing to the necessities of the society ; and this is all the laws should enforce on him ; and, no man having a natural right to be the judge between himself and another, it is his natural duty to submit to the umpirage of an impartial third. When the laws have declared and enforced all this, they have fulfilled their functions ; and *the idea is quite unfounded, that on entering into society we give up any natural right.*¹ The trial of every law by one of these texts, would lessen much the labors of our legislators, and lighten equally our municipal codes. . . .

No natural
rights given
up by the
formation of
government.

The legisla-
ture not om-
nipotent.

ture is *not* 'our God upon earth,' though by the authority they ascribe to it, and the things they expect from it, they would seem to think it is. Let them learn rather that it is an institution serving a purely temporary purpose, whose power, when not stolen, is at the best borrowed." "Social Statics," chapter 19, section 2.

Authority of
the legislature
in matters of
religion.

In reference to the authority of the legislature in religious matters, Madison, in his "Memorial and Remonstrance," of 1785, declared : "Either, then, we must say that the will of the legislature is the only measure of their authority, and that in the plenitude of that authority they may sweep away all our fundamental rights, or that they are bound to leave this particular right untouched and sacred." See *ante* page 37. The truth of the theory that the power of the legislature rightfully extends "only to the bodies and goods of men," as Roger Williams used to say, has been firmly established.

Authority of
the legislature
temporal only.

Erroneous
views.

¹The same political doctrine is expressed by Alexander H. Stephens : "Many writers maintain that individuals, upon entering into society, give up or surrender a portion of their natural rights. This seems to be a manifest error. In forming single societies or states, men only enter into a compact with each other—a social compact—either expressed or implied, as before stated, *for their mutual protection in the enjoyment by each of all their natural rights.* The chief object of all good governments, therefore, should be the protection *of all the natural rights of their constituent members.* . . . No person has any natural right wantonly to hurt or injure another. The object of government is to prevent and redress injuries of this sort ; for, in a state of nature, without the superior restraining power of government, the strong would viciously impose upon the weak. Wrongs upon rights could not be so efficiently prevented nor so adequately redressed.

Society for
the protection
of natural
rights.

Object of
government.

"Upon entering into society, however, *for the purpose of having their natural rights secured and protected, or properly redressed*, the weak do not give up or surrender any portion of their priceless heritage in any government constituted and organized as it should be."

No rights surrendered on the formation of government.

Herbert Spencer, also, develops the following principle :

"Every man has freedom to do all that he wills, provided that he infringes not the equal freedom of any other man." "Social Statics," chapter 6, section 1. Or, as subsequently expressed :

Statement of a principle.

"Every man has the right to do whatsoever he wills, provided that in the doing thereof he infringes not the equal right of any other man."

Equality of mankind.

And, in considering the idea that man surrendered a portion of his natural rights upon entering into the social state, Spencer says :

"The self-importance of a Malvolio is sufficiently ludicrous ; *but we must go far beyond it to parallel the presumption of legislatures*. Some steward who, deluded by an intense craving after dominion, and an impudence equal to his craving, should construe his stewardship into proprietorship, would more fitly illustrate it. Were such an one to argue that the estate he was appointed to manage had been virtually resigned into his possession ; that to secure the advantages of his administration its owner had given up all title to it ; that he now lived on it only by his (the steward's) sufferance ; and that he was in future to receive no emoluments from it, except at his (the steward's) good pleasure, — then should we have an appropriate travesty upon the behavior of governments to nations ; then should we have a doctrine perfectly analogous to this fashionable one, which teaches how men on becoming members of a community, give up, for the sake of certain social advantages, their natural rights. Adherents of this fashionable doctrine will doubtless protest against such an interpretation of it. They have no reasonable cause for doing so, however, as will appear on submitting them to a cross-examination. Suppose we begin it thus :

The presumption of legislatures.

An appropriate travesty

Cross-examination.

"Your hypothesis that men, when they entered into the social state, surrendered their original freedom, implies that they entered into such state voluntarily, does it not ?"

Entrance into the social state voluntary.

"It does."

"Then they must have considered the social state preferable to that under which they had previously lived ?"

Social state preferable.

"Necessarily."

"Why did it appear preferable ?"

"Because it offered greater security."

Greater security offered.

"Greater security for what ?"

"Greater security for life, for property, for the things that minister to happiness."

"Exactly. To get more happiness : that must have been the object. If they had expected to get more unhappiness, they would not have willingly made the change, would they ?"

More happiness secured.

"No."

In what happiness consists. “ ‘Does not happiness consist in the due satisfaction of all the desires ? in the due exercise of all the faculties ?’

“ ‘Yes.’

Happiness impossible without freedom. “ ‘And this exercise of the faculties is impossible without freedom of action. The desires cannot be satisfied without liberty to pursue and use the objects of them.’

“ ‘True.’

Freedom is privilege of exercising rights. “ ‘Now it is this freedom to exercise the faculties within specific limits, which we signify by the term “rights,” is it not ?’ (See “Social Statics,” page 93.)

“ ‘It is.’

Summary of argument. “ ‘Well, then, summing up your answers, it seems that, by your hypothesis, man entered the social state voluntarily ; which means that he entered it for the sake of obtaining greater happiness ; which means that he entered it to obtain fuller exercise of his faculties ; which means that he entered it to obtain security for such exercise ; which means that he entered it for the guaranteeing of his “rights.”’

“ ‘Put your proposition in a more tangible form.’

Simpler statement. “ ‘Very good. If this is too abstract a statement for you, let us attempt a simpler one. You say that a state of political combination was preferred mainly because it afforded greater security for life and property than the isolated state, do you not ?’

“ ‘Certainly.’

Man’s rights. “ ‘Are not a man’s claims to his life and his property amongst what we term his rights, and moreover, the most important of them ?’

“ ‘They are.’

Object of organized society. “ ‘Then to say that men formed themselves into communities to prevent the constant violation of their claims to life and property, is to say that they did it for the preservation of their rights ?’

“ ‘It is.’

Preservation of rights. “ ‘Wherefore, either way we find that the preservation of rights was the object sought.’

“ ‘So it would seem.’

“ ‘But your hypothesis is that men give up their rights on entering the social state ?’

“ ‘Yes.’

Contradiction involved. “ ‘See now how you contradict yourself. You assert that on becoming members of a society, men give up what, by your own showing, they joined it the better to obtain !’

Another statement. “ ‘Well, perhaps I ought not to have said that they “give up” their rights, but that they place them in trust.’

“ ‘In whose trust ?’

“ ‘In that of a government.’

Government an agent. “ ‘A government, then, is a kind of agent employed by the members of a community, to take care of, and administer for their benefit, something given into its charge ?’

THE RIGHTS OF JEWS.

WRITTEN BY JAMES MADISON TO DR. DE LA MOTTA.¹

August, 1820.

MONTPELIER, August, 1820.

SIR: . . . The history of the Jews must forever be interesting. The modern part of it is, at the same time, so little generally known, that every ray of light on the subject has its value.

History of Jews interesting.

Among the features peculiar to the political system of the United States, is the perfect equality of rights which it secures to every religious sect. And it is particularly pleasing to observe in the good citizenship of such as have been most distrusted and

Equality of all sects peculiar to American political system.

“‘Exactly.’

“‘And of course, like all other agents, exercises authority only at the will of those who appoint it — performs all that it is commissioned to do subject to their approval?’

Acts within its commissioned authority.

“‘Just so.’

“‘And the things committed to its charge still belong to the original owners. The title of the people to the rights they have placed in trust continues valid: the people may demand from this agent the full benefit accruing from these rights; and may, if they please, resume possession of them?’

Logical conclusion.

“‘Not so.’

“‘Not so! What, can they not reclaim their own?’

“‘No. Having once consigned their rights into the keeping of a legislature, they must be content with such use of them as that legislature permits.’

“And thus we arrive at the curious doctrine above referred to, that the members of a community having intrusted an estate (their rights) to the care of a steward (their government), thereby lose all proprietorship in such estate, and can have no benefit from it, except what their steward pleases to vouchsafe!” “Social Statics,” chapter 18, section 5.

Ludicrous position of our opponents.

The sovereignty of the individual and the subserviency of government were also emphatically declared in section two of the Virginia “Declaration of Rights,” in 1776, in the following words: “*That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.*”

Virginia's declaration of the subserviency of government.

Magistrates always amenable to the people.

¹ “Writings of James Madison,” volume iii, pages 178, 179.

Success of
our secular
principles.

oppressed elsewhere a happy illustration of the safety and success of this experiment of a just and benignant policy. Equal laws, protecting equal rights, are found, as they ought to be presumed, the best guarantee of loyalty and love of country; as well as best calculated to cherish that mutual respect and good-will among citizens of every religious denomination which are necessary to social harmony, and most favorable to the advancement of truth. The account you give of the Jews of your congregation brings them fully within the scope of these observations.¹

Jews included.

This letter
important.

Constitutional equality
of all sects.

Jews no
exception.

¹ This letter is an important commentary on the question of how far religious equality extends;—whether to the sects of Christianity alone, or to all religions. Mr. Madison says: “Among the features peculiar to the political system of the United States, is the *perfect equality of rights* which it secures to *every religious sect* ;” and this statement coming, as it does, from the principal framer of the instrument which is the embodiment of our political system, should decide the question positively and forever. That religious equality is not restricted to Christian sects, is also proved by the statement that the Jews come “*fully within the scope of these observations* ;” for this is a specific assertion that our institutions intended that “perfect equality” should extend to the Jews—a sect that even regards the Author of Christianity as an impostor.

Sunday laws
incompatible
with religious
equality.

Congress
prohibited
from enacting
religious laws.

What constitutes religious
liberty.

The “perfect equality” of Jews and Christians introduces the question of Sunday legislation. For, when laws are made enforcing the distinctive institutions of the Christian religion, then is the principle of religious equality set aside. The Jew has the same right to work on the day which the Christian regards as the Sabbath, as has the Christian to work on the day which the Jew regards as the Sabbath;—the right inheres in both; for no power on earth has the right to compel any individual, no matter what he believes, to observe in any way whatever the religious institutions of any other individual or set of individuals. This was the principle recognized in the enactment of the first amendment to the Constitution: “Congress shall make *no law* respecting an establishment of religion, or prohibiting the free exercise thereof.” Hence, to compel any one to observe the Sabbath of the Christian religion, or of any other religion, is directly contrary to our constitutional principles, and subversive of American institutions. Religious liberty is liberty to differ in anything and everything,—not liberty to differ *only in what the dominant party permits us to differ*; for in this idea there is nothing incompatible with the most veritable despotism.

CIVIL GOVERNMENT AND RELIGION.

WRITTEN BY JAMES MADISON TO EDWARD LIVINGSTON.¹

July 10, 1822.

MONTPELIER, July 10, 1822.

DEAR SIR: . . . I observe with particular pleasure the view you have taken of the immunity of religion from civil jurisdiction, in every case where it does not trespass on private rights or the public peace. This has always been a favorite principle with me; *and it was not with my approbation that the deviation from it took place in Congress, when they appointed chaplains, to be paid from the national treasury.* It would have been a much better proof to their constituents of their pious feeling if the members had contributed for the purpose a pittance from their own pockets. As the precedent is not likely to be rescinded, the best that can now be done may be to apply to the Constitution the maxim of the law, *de minimus non curat.*

Immunity of religion from civil jurisdiction.

Madison disapproved of deviating from our principles.

*There has been another deviation from the strict principle in the executive proclamations of fasts and festivals,*² so far, at least, as they have spoken the language of *injunction*, or have lost sight of the equality of *all* religious sects in the eye of the Constitution. Whilst I was honored with the executive trust, I found it necessary on more than one occasion to follow the example of predecessors. But I was always careful to make the proclamations absolutely indiscriminate, and merely recommendatory; or, rather, mere *designations* of a day on which all who thought proper might *unite* in consecrating it to religious purposes, *according to their own faith*

Another bad precedent.

¹ "Writings of James Madison," volume iii, page 273 *et seq.*

² For Jefferson's views on the appointment of fasts and festivals, see "Religious Proclamations Unconstitutional," *ante* pages 56, 57.

and forms. In this sense, I presume, you reserve to the government a right to *appoint* particular days for religious worship. I know not what may be the way of thinking on this subject in Louisiana. I should suppose the Catholic portion of the people, at least, as a small and even unpopular sect in the United States, *would rally*, as they did in Virginia when religious liberty was a legislative topic, *to its broadest principle.* Notwithstanding the general progress made within the two last centuries in favor of this branch of liberty, and the full establishment of it in some parts of our country, *there remains in others a strong bias towards the old error, that without some sort of alliance or coalition between government and religion, neither can be duly supported.* Such, indeed, is the tendency to such a coalition, and such its corrupting influence on both the parties, that the danger cannot be too carefully guarded against. And in a government of opinion, like ours, the only effectual guard must be found in the soundness and stability of the general opinion on the subject. *Every new and successful example, therefore, of a perfect separation between ecclesiastical and civil matters, is of importance ;* and I have no doubt that every new example will succeed, as every past one has done, *in showing that religion and government will both exist in greater purity the less they are mixed together.* It was the belief of all sects at one time that the establishment of religion by law was right and necessary ; that the true religion ought to be established in exclusion of every other ; and that the only question to be decided was, which was the true religion. The example of Holland proved that a toleration of sects dissenting from the established sect was safe, and even useful. The example of the colonies, now States, which rejected religious establishments altogether, proved that all sects might be

Madison would think that Catholics would assert their rights.

Still a strong prejudice in favor of church and state.

Danger cannot be too carefully guarded against.

Every new application is of importance.

Absolute separation better for both.

The old ideas.

Toleration beneficial.

safely and advantageously put on a footing of *equal and entire freedom*; and a continuance of their example since the Declaration of Independence has shown that its success in colonies was not to be ascribed to their connection with the parent country. If a further confirmation of the truth could be wanted, it is to be found in the examples furnished by the States which have abolished their religious establishments. I cannot speak particularly of any of the cases excepting that of Virginia, where it is impossible to deny that religion prevails with more zeal and a more exemplary priesthood than it ever did when established and patronized by public authority. We are teaching the world the great truth that governments do better without kings than with them. The merit will be doubled by the other lesson: that religion flourishes in greater purity without, than with, the aid of government.¹

Absolute religious liberty better.

Beneficial effects in Virginia.

"Liberty enlightening the world."

My pen, I perceive, has rambled into reflections for which it was taken up. I recall it to the proper object, of thanking you for your very interesting pamphlet, and of tendering you my respects and good wishes.

¹ In the foregoing letter Madison shows his progressive as well as his liberal spirit. He says: "*Every new and successful example, therefore, of a perfect separation between ecclesiastical and civil matters, is of importance*;" and I have no doubt that every new example will succeed, as every past one has done, *in showing that religion and government will both exist in greater purity the less they are mixed together.*" How different is this from the constant opposition of so many Christians to-day against every application of the doctrine. If the Bible is taken from the schools, the cry is raised that the children will go to ruin; if state chaplains are not hired, the early destruction of the state is predicted; if Sunday laws are not enforced, anathemas are pronounced against the whole nation;—and all this, too, when religion in America has prospered better—far better!—under the secular principles of government than ever it did in any nation with all its religious teaching by the state. The words of General Grant should ever be remembered by the American people: "Keep church and state forever separate."

Madison's progressive spirit.

Contrast with other Christians.

Prosperity of religion in our secular government.

RELIGION IN PUBLIC SCHOOLS.

March 19, 1823.

WRITTEN BY JAMES MADISON TO EDWARD EVERETT.¹

MONTPELIER, March, 19, 1823.

Religion in
the schools.False imputations
against
secular
schools.A futile
project.Christians
slow to see the
benefit of secular
schools.Religion
wholly ex-
empt from
cognizance of
government.All sects
have equal
rights.

DEAR SIR: . . . A university with sectarian professorships becomes, of course, a sectarian monopoly; with professorships of rival sects, it would be an arena of theological gladiators. Without any such professorships, it may incur, for a time at least, the *imputation of irreligious tendencies, if not designs*. *The last difficulty was thought more manageable than either of the others*. On this view of the subject, there seems to be no alternative but between a public university without a theological professorship, and sectarian seminaries without a university.

I recollect to have seen, many years ago, a project of a prayer, by Governor Livingston, father of the present Judge, intended to comprehend and conciliate college students of every Christian denomination, by a form composed wholly of texts and phrases of Scripture. If a trial of the expedient was ever made, it must have failed, notwithstanding its winning aspect, from the single cause that many sects reject all set forms of worship.

The difficulty of reconciling the Christian mind to the absence of a religious tuition from a university established by law, and at the common expense, is probably less with us than with you. The settled opinion here is that *religion is essentially distinct from civil government, and exempt from its cognizance; that a connection between them is injurious to both*; that there are causes in the human breast which insure the perpetuity of religion without the aid of the law; that rival sects, *with equal rights*,

¹ "Writings of James Madison," volume iii, page 305 *et seq.*

exercise mutual censorships in favor of good morals ; that if new sects arise with absurd opinions or overheated imaginations, the proper remedies lie in time, forbearance, and example ; that a legal establishment of religion without a toleration could not be thought of, and with a toleration, is no security for public quiet and harmony, but rather a source itself of discord and animosity ; and, finally, that these opinions are supported by experience, which has shown that every relaxation of the alliance between law and religion, from the partial example of Holland to its consummation in Pennsylvania, Delaware, New Jersey, etc., has been found as safe in practice as it is sound in theory. Prior to the Revolution, the Episcopal Church was established by law in this State. On the Declaration of Independence it was left, with all other sects, to a self-support. And no doubt exists that there is much more of religion among us now than there ever was before the change, and particularly in the sect which enjoyed the legal patronage. This proves rather more than that the law is not necessary to the support of religion.

Mutual censorship beneficial.

Toleration a source of animosity.

Theory of entire separation of religion and law sound.

Human laws not necessary to support of religion.

Clergy arraigned the secular schools.

Probable reason.

With such a public opinion, it may be expected that a university, with the feature peculiar to ours, will succeed here if anywhere. Some of the clergy did not fail to arraign the peculiarity ; but it is not improbable that they had an eye to the chance of introducing their own creed into the professor's chair. A late resolution for establishing an Episcopal school within the College of William and Mary, *though in a very guarded manner*, drew immediate animadversions from the press, which, if they have not put an end to the project, are a proof of what would follow such an experiment in the university of the State, endowed and supported, as this will be, altogether by the public authority and at the common expense.

CIVIL LAWS AGAINST BLASPHEMY.

Jan. 23, 1825.

WRITTEN BY JOHN ADAMS TO THOMAS JEFFERSON.¹

QUINCY, January 23, 1825.

MY DEAR SIR: We think ourselves possessed, or

We boast of
entire liberty
of conscience.How far we
are from it.Punishment
in Europe.Punishment
in America.

at least we boast that we are so, of liberty of conscience on all subjects, and of the right of free inquiry and private judgment in all cases, and yet how far are we from these exalted privileges in fact. There exists, I believe, throughout the whole Christian world, a law which makes it blasphemy to deny, or to doubt, the divine inspiration of all the books of the Old and New Testaments, from Genesis to Revelations. In most countries of Europe it is punished by fire at the stake, or the rack, or the wheel. In England itself, it is punished by boring through the tongue with a red hot poker. In America it is not much better ;² even in our Massachusetts, which,

¹ "Works of Thomas Jefferson," volume vii, pages 396, 397.Adams's
statement veri-
fied.

² The truth of Adams's statement is proved by the following law, which, legally, is in force in the very capital of our nation to-day, — although, of course, it is a dead letter. It was a Maryland law enacted October, 1793, and, with the rest of the laws of Maryland, was adopted as a law in the District of Columbia by the following act of Congress :

An act of
Congress.

"SECTION 92. The laws of the State of Maryland not inconsistent with this title, as the same existed on the twenty-seventh day of February, 1801, except as since modified or repealed by Congress or by authority thereof, or until so modified or repealed, continue in force within the District." "Revised Statutes, District of Columbia," page 9.

The first section of the act, entitled, "An act to punish blasphemers, swearers, drunkards, and Sabbath-breakers," etc., reads as follows :

Law against
blasphemy.

" . . . That if any person shall hereafter, within this province, wittingly, maliciously, and advisedly, by writing or speaking, blaspheme, or curse God, or deny our Saviour Jesus Christ to be the Son of God, or shall deny the Holy Trinity, the Father, Son, and Holy Ghost, or the Godhead of any of the three persons, or the unity of the Godhead, or shall utter any profane words concerning the Holy Trinity, or any of the persons thereof, and shall be thereof convict by verdict, or confession, shall, for the first offense, be bored through the tongue and

Boring
through the
tongue.

I believe, upon the whole, is as temperate and moderate in religious zeal as most of the States, a law was made in the latter end of the last century repealing the cruel punishments of the former laws, but substituting fine and imprisonment upon all those blasphemies upon any book of the Old Testament or the New. Now, what free inquiry, when a writer must surely encounter the risk of fine or imprisonment for adducing any arguments for investigation into the divine authority of those books? Who would run the risk of translating Volney's *Recherches Nouvelles*? Who would run the risk of translating Dapin's? But I cannot enlarge upon this subject, though I have it much at heart. I think such laws a great embarrassment, great obstructions to the improvement of the human mind. Books that cannot bear examination, certainly ought not to be established as divine inspiration by penal laws. It is true, few persons appear desirous to put such laws into execution, and it is also true that some few persons are hardy enough to venture to depart from them; but as long as they continue in force as laws, the human mind must make an awkward and clumsy progress into its investigations. I wish they were repealed. The substance and essence of Christianity, as I understand it, is eternal and unchangeable, and will bear examination forever; but it has been mixed with extraneous ingredients, which, I think, will not bear examination, and they ought to be separated.

The laws in Massachusetts.

Free inquiry proscribed.

Subject dear to Adams.

They retard progress of humanity. Their repeal desired.

Christianity will bear examination forever.

fined twenty pounds sterling; . . . and that for the second offense, the offender being therefore convict as aforesaid, shall be stigmatized by burning in the forehead with the letter B and fined forty pounds sterling; . . . and that for the third offense, the offender being convict as aforesaid, shall suffer death without the benefit of the clergy." "Laws of the District of Columbia," page 136 *et seq.*

Burning on forehead.

Death for third offense.

As incompatible as they are with religious equality, several of the States have similar laws, with the penalty somewhat modified, and now and then attempts are made to enforce them.

18TH CONGRESS]

[2D SESSION

March 3, 1825.

AN ACT

TO REDUCE INTO ONE THE SEVERAL ACTS ESTABLISHING THE POST-OFFICE DEPARTMENT.¹

ENACTED MARCH 3, 1825.

SECTION 11. *And be it further enacted*, That every

Post-offices
to be kept open
on every day
on which mail
arrives.

postmaster shall keep an office, in which one or more persons shall attend on every day on which a mail shall arrive, by land or water, as well as on other days, at such hours as the Postmaster-General shall direct, for the purpose of performing the duties thereof; and it shall be the duty of the postmaster, at all reasonable hours, *on every day of the week*, to deliver, on demand, any letter, paper, or packet, to the person entitled to, or authorized to receive, the same.

Postmaster
to deliver mail
on every day
of the week.

20TH CONGRESS]

[2D SESSION

SUNDAY MAILS.

Jan. 19, 1829.

MONDAY, JANUARY 19, 1829.²

Report of
Senate com-
mittee.

Mr. Johnson, of Kentucky, from the Committee on the Post-offices and Post-roads, to whom had been referred several petitions in relation to the transportation and opening the mails on the Sabbath day, made a report, concluding with a resolution, "that the committee be discharged from the further consideration of the subject."

Motion to
dispense with
the reading of
the report.

Mr. Johnson moved that the reading of the report be dispensed with, and that it be printed. He re-

¹ "United States Statutes at Large," volume iv, page 102.

² "Register of Debates in Congress," volume v, page 42.

quested that more than one copy for each Senator should be provided, that he might send copies to his constituents. He believed that legislation upon the subject was improper, and that nine hundred and ninety-nine in a thousand were opposed to any legislative interference, inasmuch as it would have a tendency to unite religious institutions with the government.

Extra copies wanted.

Legislation upon the subject improper.

It would have a tendency to unite religion with the state.

Mr. Chambers moved that one thousand copies be printed, and Mr. Hayne, that three thousand copies be printed for the use of the Senate.

Motion to print extra copies.

Mr. Chandler said he had no objection to the printing of any number of copies, except as to principle: it did not appear to him that it was right to order a large number of copies to be printed until the Senate knew what it was, and that they should not be ordered until the report had been read, as it might seem to imply that they approved of the report.

Objection made.

Mr. Johnson said he had moved to dispense with the reading of the report, because he did not wish to trouble the Senate with the reading of any of his reports. He believed that these petitions and memorials in relation to Sunday mails, were but the entering wedge of a scheme to make this government a religious, instead of a social and political, institution; they were widely circulated, and people were induced to sign them without reflecting upon the subject,¹ or the consequences which would result from the adoption of the measure proposed. There was nothing more improper than the interference of Congress in this matter.

Petitions an entering wedge to make the government religious instead of political.

People induced to sign them without reflection.

Nothing more improper than the interference of Congress.

¹In the more recent Sunday-law agitation of 1888-90, a much more expeditious plan was adopted for obtaining petitioners for Sunday laws. The advocates of religious legislation in many cases simply induced a representative convention or individual of some organization to indorse the petition, and then the names of the thousands or millions of mem-

Plan now adopted for obtaining "petitioners."

bers of such organization, as the case may have been, were presented to Congress as asking for a Sunday law. The following letters from Cardinal Gibbons and extract from the "Congressional Record," illustrate the plan of work :

Letter
of Cardinal
Gibbons.

"CARDINAL'S RESIDENCE, 408 NORTH CHARLES STREET, }
BALTIMORE, December 4, 1888. }

"REV. DEAR SIR : I have to acknowledge your esteemed favor of the 1st instant, in reference to the proposed passage of a law by Congress 'against Sunday work in the government's mail and military service,' etc.

"I am most happy to add my name to those of the millions of others who are laudably contending against the violation of the Christian Sabbath by unnecessary labor, and who are endeavoring to promote its decent and proper observance by legitimate legislation. As the late Plenary Council of Baltimore has declared, the due observance of the Lord's day contributes immeasurably to the restriction of vice and immorality, and to the promotion of peace, religion, and social order, and cannot fail to draw upon the nation the blessing and protection of an overruling Providence. If benevolence to the beasts of burden directed one day's rest in every week under the old law, surely humanity to man ought to dictate the same measure of rest under the new law.

"Your obedient servant in Christ,

"JAMES CARDINAL GIBBONS,

"REV. W. F. CRAFTS.

"Archbishop of Baltimore."

Cardinal
Gibbons's
name counted
for over seven
million.

This letter saying, "I am most happy to add my name," was taken as the indorsement of *seven million two hundred thousand*, and so presented to Congress, as the following from the "Congressional Record" of January 17, 1889, shows :

Senator Blair
presents the
representative
"signatures."

"MR. BLAIR : I present petitions of individual bodies, praying for the passage of a Sunday-rest law. Of the petitions, the following analysis is submitted by those who desire their presentation :

"PETITIONS FROM NATIONAL BODIES.

"Contents:

"1. Individual signatures,	407
"2. Representative signatures by indorsements of bodies and meetings,	14,174,337
"Total,	14,174,744

"Analysis of the latter :

Analysis of
indorsements.

"First indorsement is that of the American Sabbath Union, which was officially constituted by official action of the General Conference of the Methodist Episcopal Church, the Home Missionary Society of the Baptist Church, the General Assemblies of the Presbyterian Church (North and South), and the Synod of the Reformed Church, five denominations whose membership together is five million nine hundred seventy-seven thousand six hundred ninety-three. Of the membership of the Brotherhood of Locomotive Engineers, the indorsement of whose international convention stands second, at least twenty thousand citi-

zens of the United States. Of the Knights of Labor, the indorsement of whose international convention stands third, at least two hundred nineteen thousand citizens of the United States. The Presbyterian General Assembly, North, whose action stands next, had at the time of the indorsement seven hundred twenty-two thousand seventy-one members. The convention of Christian Workers, whose indorsement is next, had four hundred fifty present when the unanimous vote of indorsement was taken. The Woman's Christian Temperance Union, which comes next, had one hundred eighty-five thousand five hundred twenty-one at the time of the vote. The Roman Catholics, for whom Cardinal Gibbons speaks, number seven million two hundred thousand."

From this official analysis it appears that of the alleged fourteen million one hundred seventy-four thousand three hundred thirty-seven signatures to the Sunday-law petitions, only four hundred seven were actual signatures. And of the "representative signatures," seven million two hundred thousand (over one-half) no one had any authority whatever to present, as is proved by the following letter from Cardinal Gibbons:

Further
analysis.

"CARDINAL'S RESIDENCE, 408 NORTH CHARLES STREET, }
BALTIMORE, MD., February 27, 1889. }

"MY DEAR SIR: In reply to your favor dated February 25, 1889, duly received, his Eminence Cardinal Gibbons desires me to write to you, that whatsoever countenance his Eminence has given to the 'Sunday law' referred to in your favor, as he had not the authority, so he had not the intention, of binding the archbishops, the bishops, or the Catholic laity of the United States. His Eminence bids me say to you that he was moved to write a letter favoring the passage of the bill, mainly from a consideration of the rest and recreation which would result to our poor overworked fellow-citizens, and of the facility which it would then afford them of observing the Sunday in a religious and decorous way.

Second let-
ter of Cardinal
Gibbons.

Had no
intention to
pledge others.

"It is incorrect to assume that his Eminence, in the alleged words of Senator Blair set forth in your favor, 'signed the bill, thus pledging seven million two hundred thousand Catholics as indorsing the bill.'

An incorrect
assumption.

"I have the honor to remain, with much respect, yours faithfully,
"J. P. DONAHUE, Chancellor.

"To D. E. LINDSEY, ESQ., 708 Rayner Avenue, Baltimore, Md."

That a large part of the Knights of Labor are also opposed to Sunday legislation is proved by the following speech of Master Workman Millard F. Hobbs, of the District of Columbia, who appeared before the House Committee on the District of Columbia, at a hearing held at Washington, February 18, 1890:

Many
Knights of
Labor also
oppose Sun-
day legisla-
tion.

"MR. HOBBS: I occupy, at the present time, the position of chief officer of the Knights of Labor in the District of Columbia. I want to deny that the Knights of Labor have authorized anybody to speak for them in this particular matter.

Address
of a Master
Workman.

Knights re-
fuse to indorse
Sunday-rest
bill.

As a whole,
they will have
nothing to do
with it.

Opposition
on account of
its religious
feature.

Opposition
to Sunday bill.

Resolved to
have nothing
to do with the
measure.

Opposition
almost unani-
mous.

* Others also
opposed.

"Mr. Crafts came before the Federation of Labor, and argued this bill, and that body refused to indorse the bill. He came before the District Assembly of the Knights of Labor (which is made up of all the Knights of Labor of the Assemblies of the District of Columbia), and that body has refused to indorse it. There are parties in that body who believe in the bill as it is; others believe in a certain portion of it, and others are wholly opposed to it; and the Knights of Labor, as a whole, have thought best not to have anything to do with it. Every Knight of Labor is in favor of a day of rest;—some of them believe they ought to have two days of rest. I believe they are all in favor of the rest feature of the bill, but, on account of what is called the religious feature of the bill, they are opposed to it.

"MR. SCHULTEIS: I am a duly elected member of the legislative committee, but I deny that you are a member of that committee, or have any right to talk in this meeting, or have been authorized by any meeting—

"MR. CRAFTS: Of the Knights of Labor. Mr. Schulteis has a right to be heard here.

"MR. HOBBS: Mr. Schulteis's credentials merely show that he is a member of the District Committee on Labor Legislation, and Mr. Schulteis himself is in favor of the bill, and he is a member of that committee; but the balance of that committee have unanimously signed a petition against this bill. Now District Assembly 66 of the District of Columbia, has jurisdiction of all local assemblies in this community, and (with the exception of one local assembly) they have resolved not to do anything with this measure, claiming that they can best satisfy the members of the local assemblies in the District in this way. They do not believe in working on Sunday, but as for the other feature of the bill, they think it is best not to appear here in favor of it; and I believe there is quite a lot of the members of the order who believe that if they want rest on Sunday, or any other day, they can get it through their labor organizations, and that it is best not to try to get it through Congress by a sort of church movement.

"There are over thirty unions of Knights of Labor, and there has been only one petition sent here. They have remained silent upon this subject, and I think they want to remain silent upon it.

"Mr. Schulteis denies my right to speak here; but any one who belongs to the organization knows that I have a right to speak without credentials."

So, also, some of the members of the Methodist and Presbyterian churches, Woman's Christian Temperance Union, and others, who were counted as "petitioning" for the enactment of a Sunday-rest bill, under the head of "representative signatures," are known to be opposed to Sunday legislation, many of them having signed the counter-petition. How extensive this class is that have been represented to Congress as petitioning for Sunday laws when it was without their consent and directly contrary to their principles and desires, it is impossible to determine.

Mr. Chambers disagreed with the gentleman from Maine, that ordering a large number would imply any assent to the principles adopted in the report. Neither did he agree with the gentleman from Kentucky, that the adoption of the measure prayed for would have a bad tendency, and that legislation upon the subject would be improper. Some had asserted that this measure did tend to unite religious with our political institutions, and others had asserted that such would not be the result. The petitioners took an entirely different ground. They said that the observance of the Sabbath was connected with the civil interest of the government. He did not mean to be understood, however, as having formed any opinion upon the subject.

Mr. Chambers disagrees.

Petitioners claimed that Sabbath legislation was civil.

No opinion on the subject.

Mr. Johnson said he would state, in justice to himself, that he believed the petitioners were governed by the purest motives; but if the gentleman from Maryland would look at the proceedings of a meeting at Salem, in Massachusetts, he would find it did not matter what was the purity of the motive; that the petitioners did not consider the ground they had taken as being purely that the Sabbath was a day of rest; they assumed that it was such by a law of God.¹ Now some denominations considered one

Petitioners in convention did not consider the Sabbath purely civil.

¹In the present Sunday agitation, this is a very prominent characteristic of the movement. In the speeches delivered in their conventions, the "sin of the national violation of the law of God," "the displeasure of God because we trample his Sabbath under foot," "breaking up the churches by pleasure going, Sunday amusements, newspapers," etc., etc., is dwelt upon at length; and sometimes they even go so far as to oppose the so-called "civil Sabbath" theory, and demand a law to enforce Sunday rest, and to "promote its observance as a day of religious worship." But they generally appear before our law-making bodies in a very different way, as is strikingly illustrated by the following extract from an open letter of the leading apostle of religious legislation on the Pacific Coast, dated at Oakland, California, February 19, 1890:

Religious motives a prominent characteristic of Sunday-rest movements.

" . . . You may notice how cautious we have to be in the wording of this petition, for as we have no State law recognizing the

Letter of a Sunday-rest agitator.

Difference of opinion on the sacredness of the day.

Petitioners call upon Congress to settle the law of God.

First step in religious legislation.

The principle is wrong.

Reading of report called for.

Necessity of resorting to the "civil" Sabbath argument.

Senator Blair also endeavors to cover up the religious phase of his bills.

An appropriate scripture.

Religion the basis generally for Sunday legislation.

Rest it on the divine commandment.

day the most sacred, and some looked to another, and these petitions did, in fact, call upon Congress to settle what was the law of God. The committee had framed their report upon policy and expediency. It was but the first step taken, that they were to legislate upon religious grounds, and it made no sort of difference which was the day asked to be set apart, which day was to be considered sacred, whether it was the first day or the seventh, the principle was wrong. It was upon this ground that the committee went in making their report.

Mr. Rowan called for the reading of the report, which was read.

Sabbath day, we have no hope of closing the saloon on that day except as a municipal and police arrangement in the interest of sobriety, morality, law, and order. If we would undertake to close the saloons because the Sabbath is a day sacred by divine authority, we would be met at once, both by the council and by the courts, with the declaration: The State of California knows no religious Sabbath—no Sunday except a holiday. Thus we would be defeated at the very beginning. . . . As yet we hardly dare to be hopeful of success, but the Lord of the Sabbath is supreme in California as elsewhere. By his blessing we shall succeed. May we not hope for the prayers of the friends of temperance and of the Sabbath?" "Christian Statesman," March 13.

Another point of interest is that Senator Blair, before re-introducing his Sunday bill and constitutional amendment, December 9, 1889, studiously eliminated the prominent expressions showing its religious nature, but left the effects of his bills the same. They seem to forget that a wolf in a sheep's clothing is none the less a wolf, and that the Scripture saith: "And no marvel; for Satan himself is transformed into an angel of light."

It is only as a last resort that the "civil" Sabbath argument is taken up. In general, both the supporters and opponents of Sunday legislation, rest it on the same foundation—that it is religious legislation. Elliott F. Shepard, publisher of the New York "Mail and Express," who is president of the American Sabbath Union, declares: "We do not rest this work on mere human reasoning; we rest it wholly and directly on the divine commandment."

Rev. J. H. Knowles, editor of the "Pearl of Days," the official organ of the American Sabbath Union, says: "It will become more and more apparent that the real defenders of the day are those who regard it as a divine, not merely a human, institution."

20TH CONGRESS]

[2D SESSION

SUNDAY MAILS.¹

Jan. 19, 1829.

COMMUNICATED TO THE SENATE, JANUARY 19, 1829.

Mr. Johnson² of Kentucky, made the following report :

"The committee to whom were referred the several petitions on the subject of mails on the Sabbath, or first day of the week, report :

Report of
Senate com-
mittee.

¹ "American State Papers," Class VII, page 225.

² Richard M. Johnson was a representative statesman of the times. He commenced his public career in the legislature of Kentucky, at only twenty-three years of age. His public life is summed up by Lanman, in his "Dictionary of the United States Congress," as follows :

Senator
Johnson a
representative
statesman.

"He was born in Kentucky in 1780, and died at Frankfort, November 19, 1850. In 1807 he was chosen a representative in Congress from Kentucky, which post he held until 1813. In 1813 he raised a volunteer regiment of cavalry of one thousand men to fight the British and Indians on the Lakes, and during the campaign that followed, served with great credit, under General Harrison, as a colonel of that regiment. He greatly distinguished himself at the Battle of the Thames, and the chief Tecumseh is said to have been killed by his hand. In 1814, he was appointed Indian commissioner by President Madison. He was again a representative in Congress from 1813 to 1819. In 1819 he went from the House into the United States Senate, to fill an unexpired term; was re-elected, and served as Senator until 1829. He was re-elected to the House, and served there until 1837, when he became Vice-President, and as such presided over the Senate. At the time of his death he was a member of the Kentucky Legislature, and he died from a second attack of paralysis. He was a kind-hearted, courageous, and talented man." Pages 211, 212.

Biographical
sketch.

His bravery
in battle.

Elected to
the vice-
presidency.

His charac-
ter.

As evidence of the high regard which the nation had for him, I insert the following resolution of the first session of the fifteenth Congress of the United States :

"RESOLUTION REQUESTING THE PRESIDENT OF THE UNITED STATES TO PRESENT A SWORD TO COLONEL RICHARD M. JOHNSON.

Resolution
requesting
the President
to present
Mr. Johnson
a sword for his
bravery.

"*Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the President of the United States be requested to present to Colonel Richard M. Johnson a sword, as a testimony of the high sense entertained by Congress of the daring and distinguished valor displayed by himself and the regiment of volunteers under his command, in charging, and essentially

Rest sanctioned by the usages of all nations.

Custom has set apart Sunday as the day of rest.

Proper object of government to protect all, but to determine for none.

President Jefferson's letter to Colonel Johnson.

No power on earth to which men are bound to submit their judgment.

That some respite is required from the ordinary vocations of life is an established principle, sanctioned by the usages of all nations, whether Christian or pagan. One day in seven has also been determined upon as the proportion of time; and in conformity with the wishes of a great majority of the citizens of this country, the first day of the week, commonly called Sunday, has been set apart to that object. The principle has received the sanction of the national legislature, so far as to admit a suspension of all public business on that day, except in cases of absolute necessity, or of great public utility. This principle the committee would not wish to disturb. If kept within its legitimate sphere of action, no injury can result from its observance. It should, however, be kept in mind that *the proper object of government is to protect all persons in the enjoyment of their religious as well as civil rights, and not to determine for any whether they shall esteem one day above another, or esteem all days alike holy.*¹

contributing to vanquish, the combined British and Indian forces, under Major General Proctor, on the Thames, in Upper Canada, on the fifth day of October, one thousand eight hundred and thirteen.

"APPROVED, April 4, 1818."

While Jefferson was president of the United States, he inscribed a letter to Mr. Johnson, from which the following is an extract:

"WASHINGTON, March 10, 1808.

" . . . I cannot but be deeply sensible of the good opinion you are pleased to express of my conduct in the administration of our government. This approbation of my fellow-citizens is the richest reward I can receive. I am conscious of having always intended to do what was best for them; and never, for a single moment, to have listened to any personal interest of my own. . . ." "Works of Thomas Jefferson," volume v, page 256.

¹ "The Protestant doctrine, touching the right of private judgment," says Lord Macaulay, "is not that opposite doctrines may both be true; but it is that there is on the face of the earth no visible body to whose decrees men are bound to submit their private judgment on points of faith."

And in his essay on "Southey's Colloquies," he says: "Men are never so likely to settle a question rightly as when they discuss it

We are aware that a variety of sentiment exists among the good citizens of this nation, on the subject of the Sabbath day; and our government is designed for the protection of one as much as another. The Jews, who in this country are as free as Christians, and entitled to the same protection from the laws, derive their obligation to keep the Sabbath day from the fourth commandment of their decalogue, and in conformity with that injunction pay religious homage to the seventh day of the week, which we call Saturday. One denomination of Christians among us, justly celebrated for their piety, and certainly as good citizens as any other class, agree with the Jews in the moral obligation of the Sabbath, and observe the same day. There are, also, many Christians among us who derive not their obligation to observe the Sabbath from the decalogue, but regard the Jewish Sabbath as abrogated. From the example of the apostles of Christ, they have chosen the first day of the week instead of that day set apart in the decalogue, for their religious devotions. These have generally regarded the observance of the day as a devotional exercise, and would not more readily enforce it upon others than they would enforce secret prayer or devout meditations.

Variety
of sentiment.

The Jew as
free as the
Christian, and
entitled to the
same protec-
tion.

Certain
Christians ob-
serve the
seventh day.

Many Chris-
tians hold that
Sunday ob-
servance
should no
more be en-
forced than
secret prayer.

freely. A government can interfere in discussion only by making it less free than it would otherwise be. Men are most likely to form just opinions when they have no other wish than to know the truth, and are exempt from all influence, either of hope or fear. Government, as government, can bring nothing but the influence of hopes and fears to support its doctrines. It carries on controversy, not with reasons, but with threats and bribes. If it employs reasons, it does so, not in virtue of any powers which belong to it as a government. Thus, instead of a contest between argument and argument, we have a contest between argument and force. Instead of a contest in which truth, from the natural constitution of the human mind, has a decided advantage over falsehood, we have a contest in which truth can be victorious only by accident."

Free dis-
cussion favor-
able to truth.

Govern-
mental inter-
ference detri-
mental.

Various
opinions.

Urging the fact that neither their Lord nor his disciples, though often censured by their accusers for a violation of the Sabbath, ever enjoined its observance, they regard it as a subject on which every person should be fully persuaded in his own mind, and not coerce others to act upon his persuasion. Many Christians, again, differ from these, professing to derive their obligation to observe the Sabbath from the fourth commandment of the Jewish decalogue, and bring the example of the apostles, who appear to have held their public meetings for worship on the first day of the week, as authority for so far changing the decalogue as to substitute that day for the seventh. The Jewish government was a theocracy, which enforced religious observances; and though the committee would hope that no portion of the citizens of our country would willingly introduce a system of religious coercion in our civil institutions, the example of other nations should admonish us to *watch carefully against its earliest indication*.¹ With these different religious views, the

Jewish gov-
ernment a
theocracy.

Need of
vigilance.

Equality of
rights and
privileges for
all men.

Leave relig-
ious teaching
to private
institutions.

¹ "In September, 1875, General Grant, while attending an army reunion in Iowa, offered three resolutions on the subject of education, and made a speech in which he used the following language: 'Let us labor for the security of free thought, free speech, free press, pure morals, unfettered religious sentiments, and equal rights and privileges for all men, irrespective of nationality, color, or religion; encourage free schools, resolve that not one dollar appropriated to them shall go to the support of any sectarian school; resolve that neither State nor nation shall support any institution save those where every child may get a common school education, unmixed with any atheistic, pagan, or sectarian teaching; leave the matter of religious teaching to the family altar, *the church, and the private school, supported entirely by private contribution*, and keep church and state forever separate.' This was published broadcast, and was received with marked favor by the press and people." "Appleton's Cyclopedia of American Biography" (except italics), volume ii, page 722. Considerable interest was aroused at this time upon the question of religious liberty, which resulted in the proposal of the Blaine amendment by the national House of Representatives, August 14, 1876, *ante* page 49.

committee are of opinion that Congress cannot interfere. *It is not the legitimate province of the legislature to determine what religion is true, or what false.*

Not in the province of the legislature to decide religious questions.

Our government is a civil, and not a religious, institution. Our Constitution recognizes in every person the right to choose his own religion, and to enjoy it freely without molestation. Whatever may be the religious sentiments of citizens, and however variant, they are alike entitled to protection from the government, so long as they do not invade the rights of others. The transportation of the mail on the first day of the week, it is believed, does not interfere with the rights of conscience. *The petitioners for its discontinuance appear to be actuated by a religious zeal, which may be commendable if confined to its proper sphere; but they assume a position better suited to an ecclesiastical than to a civil institution.* They appear in many instances to lay it down as an axiom that the practice is a violation of the law of God. Should Congress in legislative capacity adopt the sentiment, it would establish the principle that the legislature is a proper tribunal to determine what are the laws of God. It would involve a legislative decision on a religious controversy, and on a point in which good citizens may honestly differ in opinion, without disturbing the peace of society or endangering its liberties. If this principle is once introduced, it will be impossible to define its bounds.

Our government civil, not religious.

Sunday work interferes not with rights of conscience. Petitioners actuated by religious zeal.

A wrong principle.

Among all the religious persecutions with which almost every page of modern history is stained, no victim ever suffered but for the violation of what government denominated the law of God.¹ To pre-

The basis of all religious persecutions.

¹ "This sombre feeling has prompted men to believe that to spare the heretic is to bring down the wrath of God upon the whole community; and now in Boston many people stoutly maintained that God

vent a similar train of evils in this country, the Constitution has wisely withheld from our govern-

Arguments
of the persecu-
tor.

had let loose the savages, with firebrand and tomahawk, to persecute the people of New England for ceasing to persecute false worshipers, and especially the idolatrous Quakers." "The Beginnings of New England," page 220 *et seq.*

A sample
argument.

Nor to-day is the same feeling any less prevalent in the present Sunday-law movement and agitation for religious legislation. Says Rev. C. E. Walker in the "Christian Nation," a National Reform organ :

"As a nation we have suffered judgments, and will suffer yet more, far more, unless the people return to God *as directed by the National Reform Association.*"

Rev. M. A. Gault, a vice-president of the National Reform Association, and an earnest advocate of Sunday legislation, says :

What Sun-
day-rest agita-
tors desire.

"It is not to have the government set up some corrupt church establishment, and then lay its hand on everything that does not conform to it. This is what caused the persecutions in the old world. Our remedy for all these malefic influences is to have the government simply set up the *moral law*, and recognize *God's authority* behind it, and *lay its hand on any religion that does not conform to it.* . . . Besides, this is the *only way* human and divine authority can exercise their separate offices in place. The only way they can be harmonized and kept from conflicting, is to say that *God knows best, and make human authority subordinate to the divine.*" "Christian Statesman," January 13, 1887.

What state-
church advo-
cates always
claim.

At a National Reform convention at Lakeside, Ohio, in August, 1887, Dr. McAllister, editor of the "Christian Statesman," said : "True Christianity will not persecute. False religions do persecute, but true religion never. The state, if led by a false religion, will be a persecutor."

This doctrine of these American Protestant divines of to-day is identically the same as that of the state-church advocates of thirteen centuries ago. This same point was somewhat more philosophically stated by Pope Pelagius, in A. D. 556, when Narses refused to obey a certain command of the pope on the ground that it would be persecution :

Philosophy
of the sixth
century.

"Be not alarmed at the idle talk of some, crying out against persecution, and reproaching the church, as if she delighted in cruelty, when she punishes evil with wholesome severities, or procures the salvation of souls. *He alone persecutes, who forces to evil.* But to restrain men from doing evil, or to punish those who have done it, is not persecution, or cruelty, but love of mankind." Bower's "History of the Popes," Pelagius, A. D. 556.

And in the "Christian Nation," September 28, 1887, we read : "Let those who will, remember the Sabbath to keep it holy from motives of love and obedience ; the remnant must be made to do so through fear of law. We have no option."

ment the power of defining the divine law.¹ It is a right reserved to each citizen; and while he respects the rights of others, he cannot be held amenable to any human tribunal for his conclusions. *Extensive religious combinations to effect a political object are, in the opinion of the committee, always dangerous.* This first effort of the kind calls for the establishment of a principle which, in the opinion of the committee, would lay the foundation for dangerous innovations upon the spirit of the Constitution, and upon the religious rights of the citizens. *If admitted, it may be justly apprehended that the future measures of the government will be strongly marked, if not eventually controlled, by the same influence. All religious despotism commences by combination and influence; and when that influence begins to operate upon the political institutions of a country, the civil power soon bends under it; and the catastrophe of other nations furnishes an awful warning of the consequence.*²

Defining the law of God, unconstitutional.

Religious combination always dangerous.

A dangerous principle.

Influence of precedents.

All religious despotism commences by combination.

Under the present regulations of the Post-office Department, the rights of conscience are not invaded. Every agent enters voluntarily, and it is presumed conscientiously, into the discharge of his duties, without intermeddling with the conscience of another. Post-offices are so regulated that but a small proportion of the first day of the week is required to be occupied in official business. In the transportation of the mail on that day, no one agent

Rights of conscience not now invaded.

¹ "From kings, indeed," says John Fiske, "we have no more to fear; they have come to be as spooks and bogies of the nursery. But the gravest dangers are those which present themselves in new forms, against which people's minds have not yet been fortified with traditional sentiments and phrases." "The Beginnings of New England," page 32.

New movements most dangerous.

² "The experience of many ages," says Lord Macaulay, "proves that men may be ready to fight to the death, and to persecute without pity, for a religion whose creed they do not understand, and whose precepts they habitually disobey."

A characteristic of the bigot.

No interference with others' rights.

Sabbatarian can rest on Saturday and Sunday-keeper on Sunday.

Government treats both classes the same.

Congress has never legislated on the subject, and has repeatedly refused to discontinue Sabbath mails.

Its discontinuance would be productive of immense injury.

is employed many hours. Religious persons enter into the business without violating their own consciences or imposing any restraints upon others. Passengers in the mail stages are free to rest during the first day of the week, or to pursue their journeys at their own pleasure. While the mail is transported on Saturday, the Jew and the Sabbatarian may abstain from any agency in carrying it, on conscientious scruples. While it is transported on the first day of the week, another class may abstain, from the same religious scruples. The obligation of government is the same on both these classes; and the committee can discover *no principle on which the claims of one should be more respected than those of the other*; unless it be admitted that the consciences of the minority are less sacred than those of the majority.

It is the opinion of the committee that the subject should be regarded simply as a question of expediency, irrespective of its religious bearing. In this light it has hitherto been considered. Congress has never legislated upon the subject. It rests, as it ever has done, in the legal discretion of the Postmaster-General, under the repeated refusals of Congress to discontinue the Sabbath mails. His knowledge and judgment in all the concerns of that department will not be questioned. His intense labors and assiduity have resulted in the highest improvement of every branch of his department. It is practiced only on the great leading mail routes, and such others as are necessary to maintain their connections. To prevent this, would, in the opinion of the committee, be productive of immense injury, both in its commercial and political, and also its moral, bearings. The various departments of government require, frequently in peace, always in war, the speediest intercourse with

the remotest parts of the country ; and one important object of the mail establishment is to furnish the greatest and most economical facilities for such intercourse. The delay of the mails one whole day in seven would require the employment of special expresses, at great expense, and sometimes with great uncertainty.

Importance
of the mails.

The commercial, manufacturing, and agricultural interests of the country are so intimately connected as to require a constant and most expeditious correspondence betwixt all our seaports, and betwixt them and the most interior settlements. The delay of the mails during the Sunday would give occasion for the employment of private expresses, to such an amount that probably ten riders would be employed where one mail stage would be running on that day, thus diverting the revenue of that department into another channel, and sinking the establishment into a state of pusillanimity incompatible with the dignity of the government of which it is a department.

Commercial
interests of the
country de-
mand Sunday
mails.

Passengers in the mail stages, if the mails are not permitted to proceed on Sunday, will be expected to spend that day at a tavern upon the road, generally under circumstances not friendly to devotion, and at an expense which many are but poorly able to encounter. To obviate these difficulties, many will employ extra carriages for their conveyance, and become the bearers of correspondence, as more expeditious than the mail. The stage proprietors will themselves often furnish the travelers with those means of conveyance ; so that the effect will ultimately be only to stop the mail, while the vehicle which conveys it will continue, and its passengers become the special messengers for conveying a considerable portion of what otherwise constitutes the contents of the mail. Nor can the committee discover where the system could consistently end. If

Idleness will
be worse than
work.

Logical requirements.

Religious legislation once established must be pursued to its ultimatum.

What other nations call toleration, we call rights.

The state to teach religion.

Mr. Madison objected to the word.

the observance of a holiday becomes incorporated in our institutions, shall we not forbid the movement of an army ; prohibit an assault in time of war ; and lay an injunction upon our naval officers to lie in the wind while upon the ocean on that day ? Consistency would seem to require it. Nor is it certain that we should stop here. *If the principle is once established that religion, or religious observances, shall be interwoven with our legislative acts, we must pursue it to its ultimatum.* We shall, if consistent, provide for the erection of edifices for worship of the Creator, and for the support of Christian ministers, if we believe such measures will promote the interests of Christianity.¹

It is the settled conviction of the committee, that the only method of avoiding these consequences, with their attendant train of evils, is to adhere strictly to the spirit of the Constitution, which regards the general government in no other light than that of a civil institution, wholly destitute of religious authority. *What other nations call religious toleration, we call religious rights.*² *They are not exercised in virtue*

¹ As if to give these words a marked fulfilment, Senator Blair drafted a constitutional amendment, which he introduced three days after he introduced his Sunday bill. This proposed amendment provides in section 2 that "each State in this Union *shall establish and maintain* a system of free public schools, adequate for the education of all the children living therein, between the ages of six and sixteen years inclusive, in the common branches of knowledge, and in virtue, morality, *and the principles of the Christian religion.*"

This would make it necessary that a part of the hundreds of millions of dollars which arises from the taxes of the believer and unbeliever, of the Jew and agnostic, of the deist and atheist, of the Catholic and Protestant, should be used in teaching the principles of the Christian religion. Though these measures will not pass, they nevertheless plainly give evidence of the restlessness which now permeates the churches, and the dissatisfaction of the clergy with the foundation principles of the American government.

² In the Virginia Convention of 1776, Mr. Madison objected to the use of the word "toleration," even in its broadest sense,— "the fullest tolera-

of governmental indulgence, but as rights, of which government cannot deprive any portion of citizens,

These rights inalienable.

tion,"—intending absolute religious liberty. The last section of the proposed Declaration of Rights provided that "all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate." Madison advocated the inalienable right of every man to his own religious opinions, and the right to exercise them—absolute separation of religion and the state. "He pointed out the distinction between the recognition of an absolute right and the toleration of its exercise; for toleration implies the power of jurisdiction. He proposed, therefore, instead of providing that 'all men should enjoy the fullest toleration in the exercise of religion,' to declare that 'all men are equally entitled to the full and free exercise of it according to the dictates of conscience.' . . . This distinction between the assertion of a right and the promise to grant a privilege, only needed to be pointed out." Accordingly, the section was finally adopted as follows: "'That religion, or the duty we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion according to the dictates of conscience.'" Thus it stands to this day in the Bill of Rights of Virginia, and of other States which subsequently made it their own, possessing for us the personal interest of being the first public work of the coming statesman." Gay's "James Madison," pages 17, 18. See also Rives's "Life of Madison," volume i, page 140.

Absolute separation of state and religion.

All men equally entitled to free exercise of religion.

The same point was tersely expressed by Lord Stanhope in the British House of Lords, in 1827, on the bill for the repeal of the test and corporation acts, in the following words: "The time was when toleration was craved by dissenters as a boon; it is now demanded as a right; but a time will come when it will be spurned as an insult."

Evolution of the toleration theory.

Dr. Philip Schaff, in laying down the same principle, says: "Toleration is an important step from state-churchism to free-churchism. But it is only a step. There is a very great difference between toleration and liberty. Toleration is a concession which may be withdrawn; it implies a preference for the ruling form of faith and worship, and a practical disapproval of all other forms. . . . In our country we ask no toleration for religion and its free exercise, but we claim it as an inalienable right." "Church and State in the United States," page 14.

Toleration not liberty.

Judge Cooley, also, in "Constitutional Limitations," declares that the American Constitutions "have not established religious toleration merely, but religious equality; in that particular, being far in advance not only of the mother country, but also of much of the colonial legislation, which, though more liberal than that of other civilized countries, nevertheless exhibited features of discrimination based upon religious beliefs or professions." Fifth edition, chapter 13, paragraph 1.

Religious equality—not religious toleration.

Though invaded, still confirmed by justice.

A single decision of a religious controversy outside the sphere of government.

Our Constitution recognizes only persuasion to enforce religious observances.

Petitioners enjoy protection from all molestation.

Report and resolution concurred in.

*however small. Despotic power may invade those rights, but justice still confirms them.*¹

Let the national legislature once perform an act which involves the decision of a religious controversy, and it will have passed its legitimate bounds. The precedent will then be established, and the foundation laid, for that usurpation of the divine prerogative in this country which has been the desolating scourge to the fairest portions of the Old World.

Our Constitution recognizes no other power than that of persuasion, for enforcing religious observances. Let the professors of Christianity recommend their religion by deeds of benevolence, by Christian meekness, by lives of temperance and holiness. Let them combine their efforts to instruct the ignorant, to relieve the widow and the orphan, to promulgate to the world the gospel of their Saviour, recommending its precepts by their habitual example; government will find its legitimate object in protecting them. It cannot oppose them, and they will not need its aid. *Their moral influence will then do infinitely more to advance the true interests of religion, than any measure which they may call on Congress to enact.* The petitioners do not complain of any infringement upon their own rights. They enjoy all that Christians ought to ask at the hands of any government—protection from all molestation in the exercise of their religious sentiments.

Resolved, That the committee be discharged from any further consideration of the subject.

The report and resolution were concurred in by the Senate.

¹ In the Virginia "Act for establishing religious freedom," Jefferson said: "We are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind; and that if any act shall be hereafter passed to repeal the present, *or narrow its operation*, such act will be an infringement of natural right." *Ante* page 26.

21ST CONGRESS]

[1ST SESSION

SUNDAY MAILS.¹

March 4, 1830.

COMMUNICATED TO HOUSE OF REPRESENTATIVES, MARCH 4 AND 5, 1830.

Mr. Johnson, of Kentucky, from the Committee on the Post-offices and Post-roads, to whom had been referred memorials from inhabitants of various parts of the United States, praying for a repeal of so much of the post-office law as authorizes the mail to be transported and opened on Sunday, and to whom had also been referred memorials from other inhabitants of various parts of the United States remonstrating against such repeal, made the following report :

Report
of House
committee.

That the memorialists regard the first day of the week as a day set apart by the Creator for religious

Memorialists
regard the first
day as sacred.

¹ "American State Papers," Class VII, page 229. This report and the report preceding it, are the last congressional reports upon the subject of Sunday legislation. The question is presented with logic, force, and clearness, and the reports are able papers upon the subject of Sunday legislation. In a document submitted to the Senate Committee on Education and Labor, the following statement is reluctantly made by a friend of religious legislation, the Rev. T. P. Stevenson, D. D., corresponding secretary of the National Reform Association and an editor of the "Christian Statesman : "

"The decision then reached remains to-day as the latest decision, and the report which recommended it as the latest utterance of the American Congress on the subject to which it refers. For fifty-one years it has stood without reply and without protest. . . . Ought that report and that decision to remain any longer on the records of the government, and to operate as they are still operating in the minds of the people, without re-argument and without protest? Whatever the issue of the present effort, it cannot make the situation worse than it is to-day. *Nothing could be worse than the last recorded decision of the government in the terms of the above report!*" "Senate Miscellaneous Documents," No. 43, page 36.

The last con-
gressional de-
cision.

Statement of
a Sunday-rest
agitator.

Such sentiments would have been more appropriate two hundred years ago than they are in this enlightened age. It is to be hoped that the spirit of the Revolution, — the spirit of Washington, Jefferson, and Madison, — the spirit so well expressed in these reports, — will not die out as time goes on ; but the intolerant spirit that is now and then manifested in various States, would seem to indicate otherwise.

Ground of
objection.

exercises, and consider the transportation of the mail and the opening of the post-offices on that day the violation of a religious duty, and call for a suppression of the practice.¹

Sunday
movements.

¹ This is the substratum of all Sunday agitation. All the Sunday movements in history have been led by the clergy. In the Senate hearing of December 13, 1888, the most prominent in our national history, of those making remarks in favor of Sunday legislation, *nine were clergymen*, two representatives of *State Sabbath Unions*, one a representative of the *Sabbath observance department* of the National Woman's Christian Temperance Union, and *only one* other representative of a secular organization (a temperance society), who was not a minister.

No Sabbath
without a re-
ligious basis.

Rev. Wilbur F. Crafts, A. M., the apostle of Sunday legislation, in a document submitted by him to the Senate Committee on Education and Labor, at the hearing on the Sunday-rest bill, December 13, 1888, says:

"A weekly day of rest has never been permanently secured in any land except on the basis of religious obligation. Take the religion out, and you take the rest out." "Senate Miscellaneous Documents," No. 43, page 21.

Parental
government
upheld.

Again he says: "Liberty is a gain, but it has its perils. . . . A large degree of freedom is not safe for children, large or small. Even a republican government is compelled to parent such of its people as are not capable of self-government, until they have learned the art." "The Sabbath for Man," page 192.

Sunday laws
must be based
on the law of
God.

And in an address in Denver, Rev. Mr. Crafts said:

"No laws will avail anything if they are not on the basis of religion. Mount Sinai is the only true basis of all Sabbath legislation." "Daily Rocky Mountain News," Denver, Colorado, February 9, 1890.

Joseph Cook, also, in 1887, in one of his celebrated Boston Monday lectures, said:

Religion its
only basis.

"The experience of centuries shows that you will in vain endeavor to preserve Sunday as a day of rest, unless you preserve it as a day of worship. Unless Sabbath observance be founded upon religious reasons, you will not long maintain it at a high standard on the basis of economic, physiological, and political considerations only."

In the various Sabbath conventions of the country, speeches and papers are even more outspoken in favor of a religious and against a "civil" Sabbath.

Dr. A. H. Lewis, also, in the preface (pages viii, ix) to his work, "A Critical History of Sunday Legislation," says:

All Sunday
laws based on
religion.

"Some now claim that Sunday legislation is not based on religious grounds. This claim is contradicted by the facts of all the centuries. Every Sunday law sprung from a religious sentiment. Under the pagan conception, the day was to be 'venerated' as a religious duty owed to

Others, by counter memorials, are known to entertain a different sentiment, believing that no one day of the week is holier than another. Others, holding the universality and immutability of the Jewish decalogue, believe in the sanctity of the seventh day of the week as a day of religious devotion, and, by their memorial now before the committee, they also request that it may be set apart for religious purposes. *Each has hitherto been left to the exercise of his own opinion, and it has been regarded as the proper business of government to protect all and determine for none.*¹ But the attempt is now made to

Variety of sentiments.

Government should protect all, but determine for none.

the god of the sun. As the resurrection-festival idea was gradually combined with the pagan conception, religious regard for the day was also demanded in honor of Christ's resurrection. In the middle-age period, sacredness was claimed for Sunday because the Sabbath had been sacred under the legislation of the Jewish theocracy. Sunday was held supremely sacred by the Puritans, under the plea that the obligations imposed by the fourth commandment were transferred to it. There is no meaning in the statutes prohibiting 'worldly labor,' and permitting 'works of necessity and mercy,' except from the religious standpoint. There can be no 'worldly business,' if it be not in contrast with religious obligation. Every prohibition which appears in Sunday legislation is based upon the idea that it is wrong to do on Sunday the things prohibited. Whatever theories men may invent for the observance of Sunday on non-religious grounds, and whatever value any of these may have from a scientific standpoint, we do not here discuss; but the fact remains that such considerations have never been made the basis of legislation. To say that the present Sunday laws do not deal with the day as a religious institution, is to deny every fact in the history of such legislation. The claim is a shallow subterfuge."

Puritan idea.

Evidence in the laws themselves.

Religious idea apparent.

Scientific ideas have never been the basis of Sunday legislation.

Contrary claims a denial of history.

A shallow subterfuge.

¹The English philosopher, John Stuart Mill, says:

"Another important example of illegitimate interference with the rightful liberty of the individual, not simply threatened, but long since carried into triumphant effect, is Sabbatarian legislation."

Sunday laws infringe liberty.

And in reference to laws forbidding Sunday pastimes, Mr. Mill says:

"The only ground, therefore, on which restrictions on Sunday amusements can be defended, must be that they are religiously wrong; a motive of legislation which can never be too earnestly protested against. '*Deorum injuriæ Diis curæ.*' It remains to be proved that society or any of its officers holds a commission from on high to avenge any supposed offense to Omnipotence, which is not also a wrong to our fellow-

Cannot be too strongly protested against.

As argument fails, force is solicited.

Authority of Congress.

Prohibited from legislating on religion.

Foundation of all religious persecutions.

A statement of the case.

Tendency of humanity.

Disposition of mankind to impose their opinions on others.

This power increasing.

bring about a greater uniformity, at least in practice ; and, as argument has failed, the government has been called upon to interpose its authority to settle the controversy.¹

Congress acts under a Constitution of delegated and limited powers. The committee look in vain to that instrument for a delegation of power authorizing this body to inquire and determine what part of time, or whether any, has been set apart by the Almighty for religious exercises. *On the contrary, among the few prohibitions which it contains, is one that prohibits a religious test, and another which declares that*

creatures. The notion that it is one man's duty that another should be religious, was the foundation of all the religious persecutions ever perpetrated, and if admitted, would fully justify them. Though the feeling which breaks out in the repeated attempts to stop railway traveling on Sunday, in the resistance to the opening of museums, and the like, has not the cruelty of the old persecutors, the state of mind indicated by it is fundamentally the same. It is a determination not to tolerate others in doing what is permitted by their religion, because it is not permitted by the persecutor's religion. It is a belief that God not only abominates the act of the misbeliever, but will not hold us guiltless if we leave him unmolested." "On Liberty," chapter 4, paragraph 19.

¹ In reference to the tendency of mankind to enforce upon others *their* opinions and *their* customs, John Stuart Mill makes the following important observation :

"Apart from the peculiar tenets of individual thinkers, there is also in the world at large an increasing inclination to stretch unduly the powers of society over the individual, both by the force of opinion and even by that of legislation ; and as the tendency of all the changes taking place in the world is to strengthen society, and diminish the power of the individual, this encroachment is not one of the evils which tend spontaneously to disappear, but, on the contrary, to grow more and more formidable. The disposition of mankind, whether as rulers or as fellow-citizens, to impose their own opinions and inclinations as a rule of conduct on others, is so energetically supported by some of the best and by some of the worst feelings incident to human nature, that it is hardly ever kept under restraint by anything but want of power ; and as the power is not declining, but growing, unless a strong barrier of moral conviction can be raised against the mischief, we must expect, in the present circumstances of the world, to see it increase." "On Liberty," chapter 1.

*Congress shall pass no law respecting the establishment of religion, or prohibiting the free exercise thereof.*¹

Congress to make no law respecting religion.

The committee might here rest the argument upon the ground that the question referred to them does not come within the cognizance of Congress; but the perseverance and zeal with which the memorialists pursue their object seems to require a further elucidation of the subject; and, as the opposers of Sunday mails disclaim all intention to unite church and state, the committee do not feel disposed to impugn their motives; and whatever may be advanced in opposition to the measure will arise from the fears entertained of its fatal tendency to the peace and happiness of the nation. The catastrophe of other nations furnished the framers of the Constitution a beacon of awful warning, and they have evinced the greatest possible care in guarding against the same evil.

Further elucidation required.

Experience of other nations a warning.

The law, as it now exists, makes no distinction as to the days of the week, but is imperative that the postmasters shall attend at all reasonable hours in every day to perform the duties of their offices; and the Postmaster-General has given his instructions to all postmasters that, at post-offices where the mail arrives on Sunday, the office is to be kept open one hour or more after the arrival and assorting the mail; but in case that would interfere with the hours of public worship, the office is to be kept open for one hour after the usual time of dissolving the meeting.

Law now makes no distinction of days of week.

¹ On this point, Jefferson, in his second inaugural address, March 4, 1805, spoke as follows:

"In matters of religion, I have considered that its free exercise is placed by the Constitution *independent of the powers of the general government*. I have therefore undertaken, on no occasion, to prescribe the religious exercises suited to it; but have left them, as the Constitution found them, under the direction and discipline of state or church authorities acknowledged by the several religious societies."

Religion placed independent of government.

No just
ground of
complaint.

This liberal construction of the law does not satisfy the memorialists ; but the committee believe that there is no just ground of complaint, unless it be conceded that they have a controlling power over the consciences of others.¹

A question
on which even
Christians dif-
fer among
themselves.

Incompati-
ble with a
republican
legislature.

If Congress shall, by the authority of law, sanction the measure recommended, it would constitute a legislative decision of a religious controversy, in which even Christians themselves are at issue. However suited such a decision may be to an ecclesiastical council, it is incompatible with a republican legislature, which is purely for political, and not for religious, purposes.

A statesman
is not to rep-
resent his con-
stituents' reli-
gious views.

In our individual character we all entertain opinions, and pursue a corresponding practice, upon the subject of religion. However diversified these may be, we all harmonize as citizens, while *each is willing that the other shall enjoy the same liberty which he claims for himself.* But, in our representative character, our individual character is lost. The individual acts for himself ; the representative for his constituents. He is chosen to represent their *political*, and not their *religious*, views ; to guard the rights of man, not to restrict the rights of conscience.

Usurpation
of the divine
prerogative.

Despots may regard their subjects as their property, and usurp the divine prerogative of prescribing their religious faith ; but the history of the world

Coercion
in matters of
opinion
illegitimate.

Especially
noxious when
supported by
public opinion.

A noble
statement.

¹ "Let us suppose," says John Stuart Mill, "that the government is entirely at one with the people, and never thinks of exerting any power of coercion unless in agreement with what it conceives to be their voice. But I deny the right of the people to exercise such coercion, either by themselves or by their government. *The power itself is illegitimate.* The best government has no more title to it than the worst. It is as noxious, or more noxious, when exerted in accordance with public opinion, than when in opposition to it. If all mankind minus one, were of one opinion, and *only one person* were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind." "On Liberty," chapter 2, paragraph 1. The principle here stated is the only one compatible with liberty.

furnishes the melancholy demonstration that the disposition of one man to coerce the religious homage of another, springs from an unchastened ambition, rather than [from] a sincere devotion to any religion.

Disposition to coerce religious homage springs from an unhallowed ambition.

The principles of our government do not recognize in the majority any authority over the minority, except in matters which regard the conduct of man to his fellow-man.¹

Majority has no authority over minority in religion.

¹ In an essay on "Railway Morals and Railway Policy," published in the "Edinburgh Review" for October, 1854, Herbert Spencer had occasion to deal with the question of a majority's powers as exemplified in the conduct of public companies. The same principle is true of governments, or of any other organizations. Mr. Spencer says :

"Under whatever circumstances, or for whatever ends, a number of men co-operate, it is held that if difference of opinion arises among them, justice requires that the will of the greater number shall be executed, rather than that of the smaller number ; and this rule is supposed to be uniformly applicable, be the question at issue what it may. So confirmed is this conviction, and so little have the ethics of the matter been considered, that to most this mere suggestion of a doubt will cause some astonishment. Yet it needs but a brief analysis to show that the opinion is little better than a political superstition. Instances may readily be selected, which prove by *reductio ad absurdum*, that the right of a majority is a purely conditional right, *valid only within specific limits*. Let us take a few. Suppose that at the general meeting of some philanthropic association, it was resolved that in addition to relieving distress, the association should employ home missionaries to preach down popery. Might the subscriptions of Catholics, who had joined the body with charitable views, be rightfully used for this end ? Suppose that of the members of a book club, the greater number, thinking that under existing circumstances rifle practice was more important than reading, should decide to change the purpose of their union, and to apply the funds in hand for the purchase of powder, ball, and targets ? Would the rest be bound by this decision ? Suppose that under the excitement of news from Australia, the majority of a Freehold Land Society should determine, not simply to start in a body for the gold-diggings, but to use their accumulated capital to provide outfits. Would this appropriation of property be just to the minority ? and must these join the expedition ? Scarcely any one would venture an affirmative answer even to the first of these questions ; much less to the others. And why ? Because every one must perceive that by uniting himself with others, no man can equitably be betrayed into acts utterly foreign to the purpose for which he joined them. Each of these supposed minorities would

. Essay of Mr. Herbert Spencer.

Right of the majority valid only within specific limits.

Usurpation
of authority.

A Jewish monarch, by grasping the holy censer, lost both his scepter and his freedom. A destiny as

A sound
argument for
the minority.

Minority
not bound by
actions of
majorities for-
eign to com-
pact.

Sphere of
the majority.

Coercion in
objects foreign
to contract is
gross tyranny.

Sphere of
the majority.

Rule of ma-
jority not
necessarily
liberty.

Rights of
minority must
be protected.

properly reply to those seeking to coerce them: 'We combined with you for a defined object; we gave money and time for the furtherance of that object; on all questions thence arising, we tacitly agreed to conform to the will of the greater number; but we did not agree to conform on any other questions. If you induce us to join you by professing a certain end, and then undertake some other end of which we were not apprised, you obtain our support under false pretenses; *you exceed the expressed or understood compact to which we committed ourselves; and we are no longer bound by your decisions.*' Clearly this is the only rational interpretation of the matter. The general principle underlying the right government of every incorporated body, is that its members contract with each other severally to submit to the will of the majority *in all matters concerning the fulfilment of the objects for which they were incorporated; but in no others.* To this extent only can the contract hold. For as it is implied in the very nature of a contract, that those entering into it must know what they contract to do; and as those who unite with others for a specified object, cannot contemplate all the unspecified objects, which it is hypothetically possible for the union to undertake; it follows that the contract entered into cannot extend to such unspecified objects. And if there exists no expressed or understood contract between the union and its members respecting unspecified objects, *then for the majority to coerce the minority into undertaking them, is nothing less than gross tyranny.*'

And, subsequently in another essay, he added:

"Naturally, if such a confusion of ideas exists in respect of the powers of a majority where the deed of corporation tacitly limits those powers, still more must there exist such a confusion where there has been no deed of incorporation. Nevertheless the same principle holds. I again emphasize the proposition that the members of an incorporated body are bound 'severally to submit to the will of the majority *in all matters concerning the fulfilment of the objects for which they are incorporated; but in no others.*' And I contend that this holds of an incorporated nation as much as of an incorporated company."

And Professor Francis Lieber says:

"Liberty has not unfrequently been defined as consisting in the rule of the majority; or, it has been said, where the people rule, there is liberty. The rule of the majority, of itself, indicates the power of a certain body; but power is not liberty. Suppose the majority bid you drink hemlock, is there liberty for you? Or, suppose the majority give away liberty and establish a despot. We might say with greater truth, *that where the minority is protected*, although the majority rule, then, probably, liberty exists. But in this latter case it is the *protection*, or in other words, *rights beyond the reach of the majority*, which constitute

little to be envied may be the lot of the American people, who hold the sovereignty of power, if they, in the person of their representatives, shall attempt to unite, *in the remotest degree*, church and state.

A possible consequence of religious legislation.

From the earliest period of time, religious teachers have attained great ascendancy over the minds of the people; and in every nation, ancient or modern, whether pagan, Mahometan, or Christian, have succeeded in the incorporation of their religious tenets with the political institutions of their country. The Persian idols, the Grecian oracles, the Roman auguries, and the modern priesthood of Europe, have all, in their turn, been the subject of popular adulation, and the agents of political deception. *If the measure recommended should be adopted, it would be difficult for human sagacity to foresee how rapid would be the succession, or how numerous the train of measures which follow, involving the dearest rights of all—the rights of conscience.*

Religious teachers of the past.

All nations have been united with some religion.

Dangerous consequences likely to result from Sunday legislation.

It is perhaps fortunate for our country that the proposition should have been made at this early period while the spirit of the Revolution yet exists in full vigor.¹ Religious zeal enlists the strongest prejudices

Opportune time for consideration of proposition.

liberty,—not the power of the majority. There can be no doubt that the majority ruled in the French massacres of the Protestants; was there liberty in France on that account? All despotism, without a standing army, must be supported or acquiesced in, by the majority. It could not stand otherwise.” “On Civil Liberty and Self-Government” (London, 1853), page 15.

Despotism of majorities.

¹ Jefferson foresaw the same retrogradation in public opinion on the matter of the individual's religious rights. He stated explicitly that from the close of the Revolution public opinion would “be going down hill.” In Query xvii, of his “Notes on Virginia,” he says in closing:

Foresight of Jefferson.

“Besides, *the spirit of the times may alter, will alter.* Our rulers will become corrupt, our people careless. A single zealot may commence persecution, and better men be his victims. It can never be too often repeated, that the time for fixing every essential right on a legal basis is while our rulers are honest, and ourselves united. From the conclusion of this war we shall be going down hill. It will not then be necessary to resort every moment to the people for support. They

Alteration in public opinion.

Prejudice
in religion.

of the human mind ; and, when misdirected, excites the worst passions of our nature, under the delusive pretext of doing God service. Nothing so infuriates the heart to deeds of rapine and blood ; nothing is so incessant in its toils, so persevering in its determinations, so appalling in its course, or so dangerous in its consequences. The equality of rights, secured by the Constitution, may bid defiance to mere political tyrants ; but the robe of sanctity too often glitters to deceive. *The Constitution regards the conscience of the Jew as sacred as that of the Christian, and gives no more authority to adopt a measure affecting the conscience of a solitary individual than that of a whole community.* That representative who would violate this principle would lose his delegated character, and forfeit the confidence of his constituents.

Religious
professions
may destroy
our equality
of rights.

Jew and
Christian
equal.

Declarations
of Congress
will convince
none.

If Congress shall declare the first day of the week holy, it will not convince the Jew nor the Sabbatarian. It will dissatisfy both, and, consequently, convert neither. Human power may extort vain sacrifices, but the Deity alone can command the affections of the heart.¹

Spirit of
persecution
in America.

It must be recollected that in the earliest settlement of this country, the spirit of persecution which drove the Pilgrims from their native home was brought with them to their new habitations, and that some Christians were scourged, and others put to death, for no other crime than dissenting from the dogmas of their rulers.

Rights of
people will be
disregarded.

will be forgotten, therefore, and their rights disregarded. They will forget themselves, but in the sole faculty of making money, and will never think of uniting to effect a due respect for their rights. *The shackles, therefore, which shall not be knocked off at the conclusion of this war, will remain on us long, will be made heavier and heavier, till our rights shall revive or expire in a convulsion.*"

Remaining
shackles will
be a constant
menace.

Enactments
against
irreligion
provoke it.

¹ "Positive enactments against irreligion," says George Bancroft, "like positive enactments against fanaticism, provoke the evil which they were designed to prevent."

With these facts before us, it must be a subject of deep regret that a question should be brought before Congress which involves the dearest privileges of the Constitution, and even by those who enjoy its choicest blessings. *We* should all recollect that Cataline, a professed patriot, was a traitor to Rome ; Arnold, a professed Whig, was a traitor to America ; and Judas, a professed disciple, was a traitor to his divine Master.

Regret that such a question should be raised.

With the exception of the United States, the whole human race, consisting, it is supposed, of eight hundred million of rational beings, is in religious bondage ; and, in reviewing the scenes of persecution which history everywhere presents, unless the committee could believe that the cries of the burning victim, and the flames by which he is consumed, bear to heaven a grateful incense, the conclusion is inevitable that the line cannot be too strongly drawn between church and state. If a solemn act of legislation shall, in *one* point, define the law of God, or point out to the citizen *one* religious duty, it may, with equal propriety, proceed to define *every* part of divine revelation, and enforce *every* religious obligation, even to the forms and ceremonies of worship, the endowment of the church, and the support of the clergy.

Religious bondage of the world.

Line cannot be too closely drawn between church and state.

If legislature can define *one* religious duty, it may define *all*.

It was with a kiss that Judas betrayed his divine Master ; and we should all be admonished — no matter what our faith may be — that the rights of conscience cannot be so successfully assailed as under the pretext of holiness. The Christian religion made its way into the world in opposition to all human governments. Banishment, tortures, and death were inflicted in vain to stop its progress. But many of its professors, as soon as clothed with political power, lost the meek spirit which their creed inculcated, and began to inflict on other religions, and on dissenting sects of their own religion, persecutions more

False professions.

Rights can be most successfully assailed under pretext of holiness.

Persecutions
by state Chris-
tianity.

aggravated than those which their own apostles had endured.¹

¹ Scarcely had the Christian church the law in her hands before she began to persecute. Gibbon says :

Toleration
of the fourth
century.

"The Edict of Milan [A. D. 313], the great charter of toleration, had confirmed to each individual of the Roman world the privilege of choosing and professing his own religion. But this inestimable privilege was soon violated ; with the knowledge of truth the emperor imbibed the maxims of persecution ; and the sects which dissented from the Catholic Church [which was orthodox], were afflicted and oppressed by the triumph of Christianity. Constantine easily believed that the heretics, who presumed to dispute *his* opinions, or to oppose *his* commands, were guilty of the most absurd and criminal obstinacy. . . . Not a

Influence
of orthodox
Christianity.

Persecution
immediately
follows its
establishment.

moment was lost [after Christianity had been established] in excluding the ministers and teachers of the separated congregations from any share of the rewards and immunities which the emperor had so liberally bestowed on the orthodox clergy. But as the sectaries might still exist under the cloud of royal disgrace, the conquest of the East was immediately followed by an edict which announced their total destruction. [Eusebius's "Life of Constantine," i, iii, chapters 63, 66.] After a preamble filled with passion and reproach, Constantine absolutely prohibits the assemblies of the heretics, and confiscates their public property to the use either of the revenue or of the Catholic Church. The design of extirpating the name, or at least of restraining the progress, of these odious heretics, was prosecuted with rigor and effect. Some of the penal regulations were copied from the edicts of Diocletian ; *and this method of conversion was applauded by the same bishops who had felt the hand of oppression, and had pleaded for the rights of humanity.*" "Decline and Fall of the Roman Empire," chapter 21, paragraph 1.

Total
destruction
of "heretics."

Applauded
by state-
church ad-
vocates.

Establish-
ment of
Christianity.

It was Christianity, too, as a whole, and not any particular belief, that Constantine had established as the religion of the state. In Eusebius's "Life of Constantine," book ii, chapter 66, we find the following in the letter of Constantine to Alexander and Arius :

"For I was aware that if I should succeed in establishing, according to my hopes, a common harmony of sentiment among *all the servants of God*, the general course of affairs would also experience a change correspondent to the pious desires of them all."

And in the edict of Constantine on polytheism, we read :

"*Victor Constantinus, Maximus Augustus, to the people of the Eastern provinces :* . . .

Edict of
Constantine.

"My own desire is, for the general advantage of the world and all mankind, that thy people should enjoy a life of peace and undisturbed concord. Let those, therefore, who are still, blinded by error, be made welcome to the same degree of peace and tranquillity which they have who believe. For may be that this restoration of equal privileges to all

The ten persecutions of the pagan emperors were exceeded in atrocity by the massacres and murders perpetrated by Christian hands ; and in vain shall we examine the records of imperial tyranny for an engine of cruelty equal to the *holy Inquisition*.¹ *Every religious sect, however meek in its origin, commenced the work of persecution as soon as it acquired political power.*

Pagan persecutions exceeded in atrocity by "Christian" persecutions.

All religions persecute on acquiring power.

The framers of the Constitution recognized the eternal principle that man's relation with his God is above human legislation, and his rights of conscience inalienable.² Reasoning was not necessary to estab-

Religion above human legislation.

will have a powerful effect in leading them into the path of truth. Let no one molest another in this matter ; but let every one be free to follow the bias of his own mind." "Life of Constantine," book ii, chapter 56.

¹ "There are many," says Thomas Clarke, "who do not seem to be sensible that all violence in religion is irreligious, and that, whoever is wrong, the persecutor cannot be right."

Persecutor necessarily wrong.

² "The United States furnishes the first example in history of a government deliberately depriving itself of all legislative control over religion, which was justly regarded by all older governments as the chief support of public morality, order, peace, and prosperity. But it was an act of wisdom and justice, rather than self-denial. Congress was shut up to this course by the previous history of the American colonies, and the actual condition of things at the time of the formation of the national government. The Constitution did not create a nation, nor its religion and institutions. It found them already existing, and was framed for the purpose of protecting them under a republican form of government, in a rule of the people, by the people, and for the people. . . .

America the first to recognize religious rights.

"The framers of the Constitution, therefore, had no right and no intention to interfere with the religion of the citizens of any State, or to discriminate between denominations ; their only just and wise course was to leave the subject of religion with the several States, to put all churches on an equal footing before the national law, and to secure to them equal protection. Liberty of all is the best guarantee of the liberty of each.

Government no right or intention to interfere with religion.

"North America was predestinated from the very beginning for the largest religious and civil freedom, however imperfectly it was understood by the first settlers. It offered a hospitable home to emigrants of all nations and creeds. The great statesmen of the Philadelphia convention recognized this providential destiny, and adapted the Constitution to it. They could not do otherwise. To assume the control of religion

Liberty in America.

The principle self-evident.

lish this truth; we are conscious of it in our own bosoms.¹ It is this consciousness which, in defiance

Any control of religion an act of usurpation. American system.

in any shape, except by way of protection, would have been an act of usurpation, and been stoutly resisted by all the States.

"Thus Congress was led by Providence to establish a new system, which differed from that of Europe and the colonies, and set an example to the several States for imitation." Philip Schaff, in "Church and State in the United States," page 23 *et seq.*

¹ Speaking of this innate sense, Herbert Spencer argues as follows:

Inherent sense of individual rights.

"But that we possess such a sense, may be best proved by evidence drawn from the lips of those who assert that we have it not. Oddly enough Bentham unwittingly derives his initial proposition from an oracle whose existence he denies, and at which he sneers when it is appealed to by others. 'One man,' he remarks, speaking of Shaftesbury, 'says he has a thing made on purpose to tell him what is right and what is wrong; and that it is called *moral sense*; and then he goes to work at his ease, and says such and such a thing is right, and such and such a thing is wrong. Why? "Because my moral sense tells me it is."' Now that Bentham should have no other authority for his own maxim than this same moral sense, is somewhat unfortunate for him. Yet on putting that maxim into critical hands, we shall soon discover such to be the fact. Let us do this.

Moral sense of man.

"'And so you think,' says the patrician, 'that the object of our rule should be "the greatest happiness to the greatest number."'

"'Such is our opinion,' answers the petitioning plebeian.

"'Well, now, let us see what your principle involves. Suppose men to be, as they very commonly are, at variance in their desires on some given point; and suppose that those forming the larger party will receive a certain amount of happiness each, from the adoption of one course, whilst those forming the smaller party will receive the same amount of happiness each, from the adoption of the opposite course: then if "greatest happiness" is to be our guide, it must follow, must it not, that the larger party ought to have their way?'

"'Certainly.'

"'That is to say, if you, the people, are a hundred, whilst we are ninety-nine, your happiness must be preferred, should our wishes clash, and should the individual amounts of gratification at stake on the two sides be equal.'

"'Exactly; our axiom involves that.'

"'So then it seems, that as, in such a case, you decide between the two parties by numerical majority, you assume that the happiness of a member of the one party, is equally important with that of a member of the other.'

"'Of course.'

"'Wherefore, if reduced to its simplest form, your doctrine turns

A critical cross-examination.

of human laws, has sustained so many martyrs in tortures and in flames. They *felt* that their duty to

Sustentation
of the martyrs.

out to be the assertion that all men have equal claims to happiness; or, applying it personally, that you have as good a right to happiness as I have.'

Equality of
rights.

" 'No doubt I have.'

" 'And pray, sir, who told you that you have as good a right to happiness as I have?'

Source of
information.

" 'Who told me? — I am sure of it; I know it; I feel it; I —'

" 'Nay, nay, that will not do. Give me your authority. Tell me who told you this — how you got at it — whence you derived it.'

" 'Whereupon, after some shuffling, our petitioner is forced to confess that he has no other authority but his own feeling — that he has simply an innate perception of the fact; or, in other words, that 'his moral sense tells him so.'

Proposition
reluctantly
admitted.

" 'In truth, none but those committed to a preconceived theory, can fail to recognize, on every hand, the workings of such a faculty. From early times downward there have been constant signs of its presence — signs which happily thicken as our own day is approached. The articles of Magna Charta embody its protests against oppression, and its demands for a better administration of justice. Serfdom was abolished partly at its suggestion. It encouraged Wickliffe, Huss, Luther, and Knox, in their contests with popery: and by it were Huguenots, Covenanters, Moravians, stimulated to maintain freedom of judgment in the teeth of armed ecclesiasticism. It dictated Milton's 'Essay on the Liberty of Unlicensed Printing.' It piloted the Pilgrim Fathers to the New World. It supported the followers of George Fox under fines and imprisonment. And it whispered resistance to the Presbyterian clergy of 1662. In latter days it emitted that tide of feeling which undermined and swept away Catholic disabilities. Through the mouths of anti-slavery orators, it poured out its fire, to the scorching of the selfish, to the melting of the good, to our national purification. It was its heat, too, which warmed our sympathy for the Poles, and made boil our indignation against their oppressor. Pent-up accumulations of it, let loose upon a long-standing injustice, generated the effervescence of a reform agitation. Out of its growing flame came those sparks by which protectionist theories were exploded, and that light which discovered to us the truths of free trade. By the passage of its subtle current is that social *electrolysis* effected, which classes men into parties, which separates the nation into its positive and negative, its radical and conservative elements. At present it puts on the garb of anti-state-church associations, and shows its presence in manifold societies for the extension of popular power. It builds monuments to political martyrs, agitates for the admission of Jews into Parliament, publishes books on the rights of women, petitions against class legislation, threatens to rebel against militia con-

Evidences
of its exist-
ence.

Its force
in reform
movements.

Present
manifest-
ations.

Rights now
demanded.

Duty to God
paramount.

A principle
that cannot
be eradicated.
It is virtually
recognized,
even by the
bigot.

Primitive
Christianity
did not ask
governments
to recognize
its religious
institutions.

All now en-
joy their re-
ligious rights.

Why wrest
these rights
from our
neighbor?

Evidence
in our max-
ims.

Innate sense
of rights.

Doctrine
of the intol-
erant.

God was superior to human enactments, and that man could exercise no authority over their consciences. *It is an inborn principle which nothing can eradicate.* The bigot, in the pride of his authority, may lose sight of it; but, strip him of his power, prescribe a faith to him which his conscience rejects, threaten him in turn with the dungeon and the fagot, and the spirit which God has implanted in him rises up in rebellion, and defies you.

Did the primitive Christians ask that government should recognize and observe their religious institutions? All they asked was toleration; all they complained of was persecution. What did the Protestants of Germany, or the Huguenots of France, ask of their Catholic superiors? Toleration. What do the persecuted Catholics of Ireland ask of their oppressors? Toleration. Do not all men in this country enjoy every religious right which martyrs and saints ever asked? Whence, then, the voice of complaint? Who is it that, in the full enjoyment of every principle which human laws can secure, wishes to wrest a portion of these principles from his neighbor?¹

scriptions, refuses to pay church-rates, repeals oppressive debtor acts, laments over the distresses of Italy, and thrills with sympathy for the Hungarians. From it, as from a root, spring our aspirations after social rectitude: it blossoms in such expressions as—‘Do as you would be done by,’ ‘Honesty is the best policy,’ ‘Justice before generosity;’ and its fruits are equity, freedom, safety.” “Social Statics,” introduction, page 33 *et seq.*

Jefferson emphasized this same point in a letter to Dr. John Manners, dated at Monticello, June 12, 1817: “The evidence of this natural right [expatriation], like that of our right to life, liberty, the use of our faculties, the pursuit of happiness, is not left to the feeble and sophistical investigations of reason, but is impressed on the sense of every man. We do not claim these under the charters of kings or legislators, but under the King of kings.”

¹ “The doctrine which,” says Lord Macaulay, “from the very first origin of religious dissensions, has been held out by all bigots of all sects, when condensed into a few words, and stripped of rhetorical disguise, is simply this: I am in the right, you are in the wrong. When

Do the petitioners allege that they cannot conscientiously participate in the profits of the mail contracts and post-offices, because the mail is carried on Sunday? If this be their motive, then it is worldly gain which stimulates to action, and not virtue or religion. Do they complain that men less conscientious in relation to the Sabbath obtain advantages over them by receiving their letters and attending to their contents? Still their motive is worldly and selfish. But if their motive be to induce Congress to sanction, by law, their *religious opinions* and *observances*, then their efforts ought to be resisted, as in their tendency fatal both to religious and political freedom.

Pointed questions.

Any attempts to sanction, by law, religious observances, should be resisted.

Why have the petitioners confined their prayer to the mails? Why have they not requested that the government be required to suspend *all* its executive functions on that day? Why do they not require us to enact that our ships shall not sail; that our armies shall not march; that officers of justice shall not seize the suspected or guard the convicted? They seem to forget that government is as necessary on Sunday as on any other day of the week. The spirit of evil does not rest on that day. It is the government, ever active in its functions, which enables us all, even the petitioners, to worship in our churches in peace.

Government as necessary on Sunday as on other days.

Our government furnishes very few blessings like our mails. They bear from the center of our republic to its distant extremes the acts of our legislative bod-

Our government furnishes few blessings like our mails.

you are the stronger, you ought to tolerate me; for it is your duty to tolerate truth. But when I am the stronger, I shall persecute you; for it is my duty to persecute error."

And John Fiske says:

"Cotton, in his elaborate controversy with Roger Williams, frankly asserted that persecution is not wrong in itself; it is wicked for falsehood to persecute truth, but it is the sacred duty of truth to persecute falsehood." "The Beginnings of New England," page 178.

A popular doctrine among Christians.

Usefulness
of the mails.

ies, the decisions of the judiciary, and the orders of the executive. Their speed is often essential to the defense of the country, the suppression of crime, and the dearest interests of the people. Were they suppressed one day of the week, their absense must be often supplied by public expresses; and, besides, while the mail bags might rest, the mail coaches would pursue their journey with the passengers. The mail bears, from one extreme of the Union to the other, letters of relatives and friends, preserving a communion of heart between those far separated, and increasing the most pure and refined pleasures of our existence; also, the letters of commercial men convey the state of the markets, prevent ruinous speculations, and promote general as well as individual interest; they bear innumerable religious letters, newspapers, magazines, and tracts, which reach almost every house throughout this wide republic. Is the conveyance of these a violation of the Sabbath?

Human advancement depends, in part, upon rapidity of dissemination of knowledge.

The advance of the human race in intelligence, in virtue, and religion itself, depends, in part, upon the speed with which a knowledge of the past is disseminated. Without an interchange between one country and another, and between different sections of the same country, every improvement in moral or political science and the arts of life, would be confined to the neighborhood where it originated. The more rapid and the more frequent this interchange, the more rapid will be the march of intellect and the progress of improvement. The mail is the chief means by which intellectual light irradiates to the extremes of the republic. Stop it one day in seven, and you retard one seventh of the advancement of our country.

Stopping mails retards our advancement.

Greater extension of mail system recommended.

So far from stopping the mail on Sunday, the committee would recommend the use of all reasonable

means to give it a greater expedition and a greater extension. What would be the elevation of our country if every new conception could be made to strike every mind in the Union at the same time? It is not the distance of a province or State from the seat of government which endangers its separation ; but it is the difficulty and unfrequency of intercourse between them. Our mails reach Missouri and Arkansas in less time than they reached Kentucky and Ohio in the infancy of their settlements ; and now, when there are three million of people extending a thousand miles west of the Alleghany, we hear less of discontent than when there were a few thousands scattered along their western base. To stop the mails one day in seven would be to thrust the whole western country, and other distant parts of this republic, one day's journey from the seat of government.

Importance
of rapid com-
munication.

Improve-
ment of mail
system.

Effect of
stopping mails
one day in
seven.

But, were it expedient to put an end to the transmission of letters and newspapers on Sunday because it violates the law of God, have not the petitioners begun wrong in their efforts? If the arm of government be necessary to compel men to respect and obey the laws of God, do not the State governments possess infinitely more power in this respect? Let the petitioners turn to *them*, and see if they can induce the passage of laws to respect the observance of the Sabbath ; for, if it be sinful for the mail to carry letters on Sunday, it must be equally sinful for individuals to write, carry, receive, or read them. It would seem to require that these acts should be made penal to complete the system. Traveling on business or recreation, except to and from church ; all printing, carrying, receiving, and reading of newspapers ; all conversations and social intercourse, except upon religious subjects, must necessarily be punished to suppress the evil. Would it not also follow, as an inevitable consequence, that every man,

Why are
petitions sent
to the national
government?

Logical
outcome of
Sunday legis-
lation.

A natural deduction.

woman, and child should be compelled to attend meeting?¹ And, as only one sect, in the opinion of some, can be deemed orthodox, must it not be determined by law which *that* is, and compel all to hear those teachers, and contribute to their support?²

Compulsory Sabbath observance and attendance at church.

¹ The logical consequence is followed out in South Carolina, for a Sunday law of that State orders all persons "to apply themselves to the observation (of the day), by exercising themselves thereon in the duties of piety and true religion, publicly and privately, and having no reasonable or lawful excuse on every Lord's day, to resort to some meeting or assembly tolerated and allowed by the laws of the State." "Sunday Laws," a paper read at the Third Annual Meeting of the American Bar Association, 1880, by Hon. Henry E. Young, of the Charleston Bar.

² The principle is the same whether it be *preachers* or *teachers*. Both teach religion; and the money with which they are paid is raised by general taxation. Commenting upon the theory of some that the state has the right to teach religion, Mr. Herbert Spencer says:

Necessary decisions in providing for religious instruction.

"Before state-paid ministers can be set to preach, it must first be decided *what* they are to preach. And who is to say? Clearly, the state. Either it must itself elaborate a creed, or it must depute some man or men to do so. It must in some way sift out truth from error, and cannot escape the responsibility attending this. If it undertakes itself to settle the doctrines to be taught, it is responsible. If it adopts a ready-made set of doctrines, it is equally responsible. And if it selects its doctrines by proxy, it is still responsible, both as appointing those who choose for it, and as approving their choice. Hence, to say that a government ought to set up and maintain a system of religious instruction, is to say that it ought to pick out from amongst the various tenets that men hold or have held, those which are right; and that, when it has done this—when it has settled between the Roman Catholic, the Greek, the Lutheran, and the Anglican creeds, or between the Puseyite, High Church, and Evangelical ones—when it has decided whether we should be baptized during infancy or at a mature age, whether the truth is with Trinitarians or Unitarians, whether men are saved by faith or by works, whether pagans go to hell or not, whether ministers should preach in black or white, whether confirmation is scriptural, whether or not saints' days should be kept, and (as we have lately seen it debating) whether baptism does or does not regenerate—when, in short, it has settled all those controversies which have split mankind into innumerable sects, it ought to assert that its judgment is incapable of error—is unquestionable—is beyond appeal. There is no alternative. Unless the state says this, it convicts itself of the most absurd inconsistency. Only on the supposition of infallibility can its ecclesiastical doings be made to

Responsibility of the state.

Questions to be decided.

If minor punishments¹ would not restrain the Jew, or the Sabbatarian, or the infidel, who believes Sat- Important question.

seem tolerable. How else shall it demand rates and tithes of the dissenter? What answer can it make to his expostulations?

“Are you quite sure about these doctrines of yours?” inquires the dissenter. The question interrogatively presented.

“No,” replies the state; “not quite sure, but nearly so.”

“Then, it is just possible you may be wrong, is it not?”

“Yes.”

“And it is just possible that I may be right, is it not?”

“Yes.”

“Yet you threaten to inflict penalties upon me for non-conformity! You seize my goods; you imprison me if I resist; and all to force from me the means to preach up doctrines which you admit *may* be false, and by implication to preach down doctrines which you admit *may* be true! How do you justify this?” Injustice to the individual.

“No reply.”

“Evidently, therefore, if the state persists, the only position open to it is that its judgment *cannot* be mistaken—that its doctrines *cannot* be erroneous. And now observe that if it says this, it stands committed to the whole Roman Catholic discipline as well as to its theory. Having a creed that is beyond the possibility of doubt, and being commissioned to disseminate that creed, the state is in duty bound to employ the most efficient means of doing this—is bound to put down all adverse teachers, as usurping its function and hindering the reception of its unquestionable doctrine—is bound to use as much force as may be needful for doing this—is bound, therefore, to imprison, to fine, and if necessary, to inflict severer penalties, so that error may be exterminated and truth be triumphant. There is no half-way. Being charged to put men in the way to heaven, it cannot without sin permit some to be led the other way. If, rather than punish a few on earth, it allows many to be eternally damned for misbelief, it is manifestly culpable. Evidently it must do all, or it must do nothing. If it does not claim infallibility, it cannot in reason set up a national religion; and if, by setting up a national religion, it does claim infallibility, it ought to coerce all men into the belief of that religion. Thus, as was said, every state church is essentially popish.” Necessary deduction.

¹Gibbon makes the following important observation:

“It is incumbent on the authors of persecution previously to reflect whether they are determined to support it in the last extreme. They excite the flame which they strive to extinguish; and it soon becomes necessary to chastise the contumacy, as well as the crime, of the offender. The fine which he is unable or unwilling to discharge, exposes his person to the severities of the law; and his contempt of lighter penalties suggests the use and propriety of *capital punishment*.” “Decline and Fall of the Roman Empire,” chapter 37, paragraph 23. If the principle is right, it must be pursued to its ultimatum.

Danger in inaugurating persecution.

Logical
demands of
the system.

urday to be the Sabbath, or disbelieves the whole, would not the same system require that we should resort to imprisonment, banishment, the rack, and the fagot, to force men to violate their own consciences, or compel them to listen to doctrines which they abhor? When the State governments shall have yielded to these measures, it will be time enough for Congress to declare that the rattling of the mail coaches shall no longer break the silence of this despotism.

Govern-
ment's duty is
to protect *all*
on *every day*.

It is the duty of this government to afford *all*—to Jew or Gentile, pagan or Christian, the protection and the advantages of our benignant institutions on *Sunday* as well as every day of the week. Although this government will not convert itself into an ecclesiastical tribunal, it will practice upon the maxim laid down by the founder of Christianity—that it is lawful to do *good* on the Sabbath day.

Christian
means, not
law, should be
resorted to.

If the Almighty has set apart the first day of the week as a time which man is bound to keep holy, and devote exclusively to his worship, would it not be more congenial to the precepts of Christians to appeal exclusively to the great Lawgiver of the universe to aid them in making men better—in correcting their practices, by purifying their hearts? Government will protect them in their efforts. When they shall have so instructed the public mind, and awakened the consciences of individuals as to make them believe that it is a violation of God's law to carry the mail, open post-offices, or receive letters on Sunday, the evil of which they complain will cease of itself, without any exertion of the strong arm of civil power. When man undertakes to become God's avenger, he becomes a demon.¹ Driven by the frenzy

Government
will afford
them pro-
tection.

How to
remedy
the evil.

Sacrifice
of independ-
ent minds.

¹ “Now among the victims of religious persecution must necessarily be found an unusual proportion of men and women more independent than the average in their thinking, and more bold than the average in utter-

of a religious zeal, he loses every gentle feeling, forgets the most sacred precepts of his creed, and becomes ferocious and unrelenting.¹

The zealot forgets the precepts of Christianity.

Our fathers did not wait to be oppressed when the mother country asserted and exercised an unconstitutional power over them. To have acquiesced in the tax of three pence upon a pound of tea, would have led the way to the most cruel exactions; they took a bold stand against the principle, and liberty and independence was the result. The petitioners have not requested Congress to suppress Sunday

The unjust oppression of the colonists.

ing their thoughts. The Inquisition was a diabolical winnowing machine for removing from society the most flexible minds and the stoutest hearts; and among every people in which it was established for a length of time, it wrought serious damage to the national character. It ruined the fair promise of Spain, and inflicted incalculable detriment upon the fortunes of France. No nation could afford to deprive itself of such a valuable element in its political life as was furnished in the thirteenth century by the intelligent and sturdy Cathari of southern Gaul." John Fiske, in "The Beginnings of New England," pages 41, 42.

Detriment of persecution to national character.

¹ The truth of this statement has been proved in our own history. Neither Cotton nor Winthrop, says John Fiske, "had the temperament which persecutes. Both were men of genial disposition, sound common sense, and exquisite tact." Yet these were the men who executed the death penalty on "dissenters" and "infidels;" and Roger Williams, in the dead of winter, was compelled to take refuge with the savages of the forests. "On the statute books," says Fiske, "there were not less than fifteen capital crimes, including such offenses as idolatry, witchcraft, blasphemy, marriage within the Levitical degrees, 'presumptuous Sabbath-breaking,' and cursing or smiting one's parents." "Colonial Laws of Massachusetts," pages 14-16.

Men of genial disposition will persecute even to death.

Capital crimes.

Hutchinson, the historian, declares: "In the first draught of the laws by Mr. Cotton, which I have seen corrected with Mr. Winthrop's hand, diverse other offenses were made capital; viz., profaning the Lord's day in a careless or scornful neglect or contempt thereof. (Numbers 15:30-36.)" "History of Massachusetts," volume i, page 390.

Sabbath-breaking a capital crime.

The following, which was legal authority, is an extract from the "answers of the reverend elders to certain questions propounded to them," November 13, 1644: "So any sin committed with an high hand, as the gathering of sticks on the Sabbath day, may be punished with death, when a lesser punishment might serve for gathering sticks privily, and in some need." "Records of Massachusetts Bay," volume ii, page 93; Winthrop, ii, 204 *et seq.*

Religious,
not civil,
reasons the
cause of
complaint.

mails upon the ground of political expediency, but because they violate the sanctity of the first day of the week.

Counter-
memorials
oppose inter-
ference of
Congress on
a religious
question.
Sunday leg-
islation uncon-
stitutional.

This being the fact, the petitioners having indignantly disclaimed even the wish to unite politics and religion, may not the committee reasonably cherish the hope that they will feel reconciled to its decision in the case; especially as it is also a fact that the counter-memorials, equally respectable, oppose the interference of Congress upon the ground that it would be legislating upon a religious subject, and therefore unconstitutional?

Resolution.

Resolved, That the committee be discharged from the further consideration of the subject.¹

¹ Mr. Ben: Perley Poore, an old official of the United States Senate, in his "Reminiscences" (page 101), records the following in connection with the foregoing report:

Reminis-
cence of 1829-
1830.

Public streets
obstructed.

"When Admiral Reeside was carrying the mails between New York and Washington, there arose a formidable organization in opposition to the Sunday mail service. The members of several religious denominations were prominent in their demonstrations, and in Philadelphia chains, secured by padlocks, were stretched across the streets on Sundays to prevent the passage of the mail coaches. The subject was taken up by politicians, and finally came before the House of Representatives, where it was referred to the Committee on Post-roads, of which Richard M. Johnson of Kentucky, was then the chairman. The Rev. Obadiah B. Brown, who had meanwhile been promoted in the Post-office Department, wrote a report on the subject for Colonel Johnson, which gave the 'killer of Tecumseh' an extended reputation, and was the first step toward his election as Vice-President, a few years later."

Popularity
of reports.

Spirit of
the times.

The general favor with which these reports were received, their commendation by the newspapers, and the expressions of approval by public assemblies, show in what light religious legislation was regarded three quarters of a century ago. Nor was it, as the advocates of Sunday laws would have us believe, on account of opposition to Christianity, but exactly the opposite; for some of the most strenuous advocates of our secular system of government were Christian ministers. The power of legislating upon religion, as Bancroft says, was withheld, "*not from indifference*, but that the infinite spirit of eternal truth might move in its freedom and purity and power." "History of the Formation of the Constitution," book v, chapter 1.

21ST CONGRESS]

[1ST SESSION

MEMORIAL

Feb. 15, 1830.

OF THE GENERAL ASSEMBLY OF INDIANA.¹EXECUTIVE DEPARTMENT, INDIANA, }
INDIANAPOLIS, February 15, 1830. }

The memorial of the General Assembly of the State of Indiana, respectfully represents :

Memorial.

That we view all attempts to introduce sectarian influence into the councils of the nation as a violation of both the letter and the spirit of the Constitution of the United States and of this State, and at the same time dangerous to our civil and religious liberties, inasmuch as those charters secure to every man the free exercise of his religion and the right to worship the Almighty God according to the dictates of his own conscience, and inasmuch as any legislative interference in matters of religion would be an infraction of those rights ;

Sectarian influence in Congress unconstitutional.

Also dangerous to our liberties.

Any legislative interference in religion an infraction of rights.

We, therefore, most respectfully remonstrate against any attempt, by a combination of one or more sects, to alter the laws providing for the transportation of the mail, and against the passage of a law to regulate or enforce the observance of religious duties, or which may interfere with what belongs to the conscience of each individual ;²

Remonstrance against combination of sects to enforce religious duties.

¹ "American State Papers," Class VII, page 240.

² "There ought to be room in this world," says Samuel T. Spear, in "Religion and the State," "for *all* the consciences in it, without any encroachment upon the rights of each other ; and there would be if *all* men, in their relations to each other, would be content to exercise their *own* rights of conscience in a reasonable manner. This would leave every man to determine the religious question for himself, and, as the necessary consequence, relieve every man from all impositions, burdens, taxes, or disabilities arising from the determination of the question by others. Though the rule is a simple one, it is, nevertheless, one of the most difficult things for bigotry to learn. The only way to learn it effectually is not to be a bigot."

Rights do not conflict.

All religious legislation contrary to Christianity.

No observance of Christianity needs the state's aid.

Every connection between church and state dangerous to liberty.

A cordial approval of Mr. Johnson's Senate report.

A solemn protest against the enforced observance of any day. Yet voluntary observance beneficial.

Resolution.

Value of first amendment.

Jefferson's popularity.

That all legislative interference in matters of religion is contrary to the genius of Christianity; and that there are no doctrines or observances inculcated by the Christian religion which require the arm of civil power either to enforce or sustain them;

That we consider every connection between church and state at all times dangerous to civil and religious liberty;¹ and further,

That we cordially agree to and approve of the able report of the Hon. R. M. Johnson, adopted by the Senate of the United States at its last session, upon the petitions for prohibiting the transportation of the mail on Sunday; and while we protest in the most solemn manner against every attempt to enforce, by legislative interference, the observance of any particular day, yet believe that both the spiritual and temporal interest of mankind is promoted by setting apart one day in the week for the purpose of rest, religious instruction, and the worship of God.

Resolved, That his Excellency the Governor be requested to transmit a copy of the foregoing memorial to each of our Senators and Representatives in Congress, and to the President of the Senate and Speaker of the House of Representatives.

¹Jefferson, February 4, 1809, replying to an address of the society of the Methodist Episcopal Church, at New London, Connecticut, said:

"No provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of the civil authority. It has not left the religion of its citizens under the power of its public functionaries, were it possible that any of these should consider a conquest over the consciences of men either attainable or applicable to any desirable purpose."

Although Jefferson was not a Christian, no president ever received more commendations in public addresses from religious denominations than did he. His jealousy for the rights of every denomination, and for the rights of every individual of every denomination, made him extremely popular among all lovers of religious liberty; and many were the addresses which he received, especially from the Baptists and Methodists, approbative of his course in carrying out American principles.

CHRISTIANITY AND THE COMMON LAW.

WHETHER CHRISTIANITY IS A PART OF THE COMMON LAW.¹

In *quare impedit*, in Common Bench, [Year Book] 34, Hilary Term 6, folio 38, the defendant, bishop of Lincoln, pleads that the church of the plaintiff became void by the death of the incumbent; that the plaintiff and I. S., each pretending a right, presented two several clerks; that the church being thus rendered litigious, he was not obliged, by the ecclesiastical law, to admit either, until an inquisition *de jure patronatus*, in the ecclesiastical court; that, by the same law, this inquisition was to be at the suit of either claimant, and was not *ex officio* to be instituted by the bishop, and at his proper costs; that

A. D. 1458.

Statement of the circumstances causing the litigation during which Prisot's statement was made.

¹ Appendix to "Reports of Cases Determined in the General Court of Virginia, from 1730 to 1740 and from 1768 to 1772, by Thomas Jefferson" (Charlottesville, F. Carr & Co., 1829), page 137 *et seq.* In the preface to his reports (page vi), Jefferson says:

"I have added, also, a disquisition of my own on the most remarkable instance of judicial legislation that has ever occurred in English jurisprudence, or, perhaps, in any other. It is that of the adoption in mass of the whole code of another nation, and its incorporation into the legitimate system, by usurpation of the judges alone, without a particle of legislative will having ever been called on, or exercised towards its introduction or confirmation."

Most remarkable instance of judicial legislation in history.

And in a letter to Edward Everett, dated at Monticello, October 15, 1824, he wrote as follows:

"I do not remember the occasion which led me to take up this subject, while a practitioner of the law. But I know I went into it with all the research which a very copious law library enabled me to indulge; and I fear not for the accuracy of any of my quotations. The doctrine might be disproved by many other and different topics of reasoning; but having satisfied myself of the origin of the forgery, and found how, like a rolling snow-ball, it had gathered volume, I leave its further pursuit to those who need further proof, and perhaps I have already gone further than the feeble doubt you expressed might require." "Works of Thomas Jefferson," volume vii, page 383.

Thoroughness of Jefferson's study.

Statement of
circumstances.

neither party had desired such an inquisition ; that six months passed ; whereon it belonged to him of right to present as on a lapse, which he had done. The plaintiff demurred.

The expres-
sion upon
which is based
the claim that
"Christianity
is part of the
common law."

A question was, How far the ecclesiastical law was to be respected in this matter by the common law court. And Prisot, chapter 5, in the course of his argument uses this expression : "A tiels leis que ils de seint eglise ont en *ancien scripture*, covient à nous à donner credence ; car ceo common ley sur quel tous manners leis sont fondés : et auxy, sin, nous sumus obligés de conustre lour ley de seint eglise : et semblablement ils sont obligés de conustre nostre ley ; et, sin, si poit apperer or à nous que l'evesque ad fait come un ordinary fera en tiel cas, adong nous devons ceo adjuger bon, ou auterment nemy," etc.¹

Translation.

¹ "To such laws as those of holy church have in ancient writing, it is proper for us to give credence, for it is common law on which all manners of laws are founded ; and also, if not, we are obliged to know the law of their holy church [ecclesiastical law] ; and, likewise, they are obliged to know our law ; and, if not, if it appears to us that the bishop has done as an ordinary would do in such case, then we should adjudge it good, otherwise not," etc.

Expression
paraphrased.

Jefferson says : "The reports in the Year Books were taken very short. The opinions of the judges were written down sententiously, as notes or memoranda, and not with all the development which they probably used in delivering them. Prisot's opinion, to be fully expressed, should be thus paraphrased : 'To such laws as those of holy church have recorded and preserved in their ancient books and writings, it is proper for us to give credence ; for so is, or so says the common law, or law of the land, on which all manner of other laws rest for their authority, or are founded ; that is to say, the common law, or the law of the land common to us all, and established by the authority of us all, is that from which is derived the authority of all other special and subordinate branches of law, such as the canon law, law merchant, law maritime, law of gavelkind, borough-English, corporation laws, local customs and usages, to all of which the common law requires its judges to permit authority in the special or local cases belonging to them. The evidence of these laws is preserved in their ancient treatises, books, and writings, in like manner as our own common law itself is known, the text of its original enactments having been long lost, and its

It does not appear that judgment was given. Year Book, *ubi supra*, third chapter; Fitzherbert's Abridgment, *quare impedit*, 89; Brooke's Abridgment, *quare impedit*, 12.

Judgment not recorded.

Finch misstates this in the following manner: "To such laws of the church as have warrant in *Holy Scripture*, our law giveth credence," and cites the above case, and the words of Prisot in the margin. Finch's law, book 1, chapter 3, published 1613. Here we find "ancien scripture" [*ancient writing*] converted into "Holy Scripture," whereas it can only mean the *ancient written* laws of the church. It cannot mean the Scriptures, — *First*, Because the term "ancien scripture" must then be understood as meaning the Old Testament in contradistinction to the New, and to the exclusion of that; which would be absurd and contrary to the wish of those who cite this passage to prove that *the Scriptures, or Christianity, is a part of the com-

Finch's misstatement of Prisot's expression.

The words "ancien scripture" converted into "Holy Scripture."

Meaning of Prisot's expression.

The absurdity involved in the claim.

[*138]

substance only preserved in ancient and traditionary writings. And if it appears, from their ancient books, writings, and records, that the bishop in this case, according to the rules prescribed by these authorities, has done what an ordinary would have done in this case, then we should adjudge it good, otherwise not.' To decide this question, they would have to turn to the ancient writings and records of the canon law, in which they would find evidence of the laws of advowsons, *quare impedit*, the duties of bishops and ordinaries, for which terms Prisot could never have meant to refer them to the Old or New Testament, *les saints scriptures*, where surely they would not be found. A license which should permit 'ancien scripture' to be translated 'Holy Scripture,' annihilates at once all the evidence of language. With such a license, we might reverse the sixth commandment into 'thou shalt not omit murder.' It would be the more extraordinary in this case, when the mistranslation was to effect the adoption of the whole code of the Jewish and Christian laws into the text of our statutes, to convert religious offense into temporal crimes, to make the breach of every religious precept a subject of indictment, submit the question of idolatry, for example, to the trial of a jury, and to a court, its punishment, to the third and fourth generation of the offender. Do we allow our judges this lumping legislation?" "Works of Thomas Jefferson," volume vii, pages 381, 382.

Nothing in the Bible on the question under consideration.

Consequence of Prisot's mistranslation.

Prisot's
expression.

mon law. *Second*, Because Prisot says: "Ceo (est) common ley sur quel tous manners leis sont fondés."¹ Now it is true that the ecclesiastical law, so far as admitted in England, derives its authority from the common law. But it would not be true that the Scriptures so derive their authority. *Third*, The whole case and arguments show that the question was, How far the ecclesiastical law in general should be respected in a common law court. And in Brooke's abridgment of this case, Littleton says: "Les juges del common ley prendra conusans quid est *lex ecclesiæ*, vel admiralitatis, et trujus modi."² *Fourth*, Because the particular part of the ecclesiastical law then in question, viz.: the right of the patron to present to his advowson, was not founded on the law of God, but subject to the modifications of the lawgiver; and so could not introduce any such general position as Finch pretends.

Wingate
formulates
Finch's false
quotation into
a maxim
of law.

Sheppard's
statement.

Sir Matthew
Hale's ex-
pression.

Yet Wingate (in 1658) thinks proper to erect this false quotation into a maxim of the common law, expressing it in the very words of Finch, but citing Prisot. Wingate's Maxims, 3. Next comes Sheppard (in 1675), who states it in the same words of Finch, and quotes the Year Book, Finch, and Wingate. 3 Sheppard's Abridgment, title "Religion." In the case of the King *v.* Taylor, Sir Matthew Hale lays it down in these words: "Christianity is parcel of the laws of England." 1 Ventris's Reports, 293; 3 Keble's Reports, 607. But he quotes no authority. It was from this part of the supposed common law that he derived his authority for burning witches. So strong was this doctrine become in 1728, by additions and repetitions from one another, that in the case of the King *v.* Woolston, the court would not suffer it to

Translations.

¹ "It is common law, on which all manners of laws are founded."

² "The judges of the common law will take cognizance of what is the law of the church [ecclesiastical law], or of the admiralty, and of this sort."

be debated, whether to write against Christianity was punishable in the temporal courts at common law, saying it had been so settled in Taylor's case, *ante*, 2 Strange's Reports, 834; therefore, Wood, in his Institutes, lays it down that all blasphemy and profaneness are offenses by the common law, and cites Strange, *ubi supra*, Wood, 409. And Blackstone (about 1763) repeats, in the words of Sir Matthew Hale, that "Christianity is part of the laws of England," citing Ventris and Strange, *ubi supra*, 4 Blackstone's Commentaries, 59. Lord Mansfield qualified it a little by saying, in the case of the Chamberlain of London *v.* Evans, 1767, that "the essential principles of revealed religion are part of the common law." But he cites no authority, and leaves us at our peril to find out what, in the opinion of the judge, and according to the measure of his foot or his faith, are those essential principles of revealed religion obligatory on us as a part of the common law.

The question not allowed to be debated.

Wood lays it down that all blasphemy and profaneness are offenses by the common law.

Blackstone repeats Matthew Hale's expression.

Mansfield's statement.
No authority cited.

Summary of authorities.

Thus we find this string of authorities, when examined to the beginning, all hanging on the same hook, a perverted expression of Prisot, or on nothing. For they all quote Prisot, or one another, or nobody. Thus Finch quotes Prisot; *Wingate also; Sheppard quotes Prisot, Finch, and Wingate; Hale cites nobody; the court in Woolston's case cite Hale; Wood cites Woolston's case; Blackstone that and Hale; and Lord Mansfield, like Hale, ventures it on his own authority. In the earlier ages of the law, as in the Year Books, for instance, we do not expect much recurrence to authorities by the judges, because in those days there were few or none such made public. But in later times we take no judge's word for what the law is, further than he is warranted by the authorities he appeals to. His decision may bind the un-

[*139]

Decisions
of judges can-
not alter the
law.

Hale's com-
ments on the
common law.

fortunate individual who happens to be the particular subject of it; but it cannot alter the law. Although the common law be termed "*lex non scripta*," yet the same Hale tells us, "When I call those parts of our laws *leges non scriptæ*, I do not mean as if all those laws were only oral, or communicated from the former ages to the latter merely by word. For all these laws have their several monuments in writing, whereby they are transferred from one age to another, and without which they would soon lose all kind of certainty. They are for the most part extant in records of pleas, proceedings, and judgments, in books of reports and judicial decisions, in tractates of learned men's arguments and opinions, preserved from ancient times and still extant in writing." Hale's Common Law, 22.

Judges
should be held
to a declara-
tion of their
authorities.

Authorities for what is common law may, therefore, be as well cited, as for any part of the *lex scripta*; and there is no better instance of the necessity of holding the judges and writers to a declaration of their authorities than the present, where we detect them endeavoring to make law where they found none, and to submit us, at one stroke, to a whole system, no particle of which has its foundation in the common law, or has received the "*estō*" of the legislator. For we know that the common law is that system of law which was introduced by the Saxons on their settlement in England,¹ and altered,

Origin of
the common
law.

¹ "Our ancient lawyers, and particularly Fortescue (chapter 17), insist with abundance of warmth that these customs are as old as the primitive Britons, and continued down, through the several mutations of government and inhabitants, to the present time, unchanged and unadulterated." Blackstone's "Commentaries on the Laws of England," introduction, page *64. Blackstone, however, assures us that these customs were influenced by the customs of adventitious nations intermixing with the Saxons, and that Fortescue's statement "ought only to signify, as the truth seems to be, that there never was any formal exchange of one system of laws for another."

from time to time, by proper legislative authority, from that time to the date of Magna Charta, which terminates the period of the common law, or *lex non scripta*, and commences that of the statute law, or *lex scripta*. This settlement took place about the middle of the fifth century, but Christianity was not introduced till the seventh century; the conversion of the first Christian king of the Heptarchy having taken place about the year 598, and that of the last about 686. Here, then, was a space of two hundred years, during which the common law was in existence, and Christianity no part of it. If it ever, therefore, was adopted into the common law, it must have been between the introduction of Christianity and the date of Magna Charta. But of the laws of this period we have a tolerable collection by Lambard and *Wilkins, probably not perfect; but neither very defective; and if any one chooses to build a doctrine on any law of that period, supposed to have been lost, it is incumbent on him to prove it to have existed, and what were its contents. These were so far alterations of the common law, and became themselves a part of it, but none of these adopt Christianity as a part of the common law. If, therefore, from the settlement of the Saxons to the introduction of Christianity among them, that system of religion could not be a part of the common law, because they were not yet Christians, and if, having their laws from that period to the close of the common law, we are able to find among them no such act of adoption, we may safely affirm (though contradicted by all the judges and writers on earth) that Christianity neither is, nor ever was, a part of the common law.

Alterations
of the common
law.

Termination
of common-
law period.

Introduction
of Christianity
into England.

If adopted
into the com-
mon law, it
must have
been previous
to date
of Magna
Charta.
[*140]

Not so
adopted.

Hence,
Christianity
neither is,
nor ever was,
a part of the
common law.

Silence
another proof.

Another cogent proof of this truth is drawn from the silence of certain writers on the common law. Bracton gives us a very complete and scien-

Bracton's
treatise.

A valuable
book.

No intima-
tion that
Christianity
was a part of
common law.
Fleta
and Britton
equally silent.
Glanvil
also silent.

Fortescue's
statement of
the question.

Falsifi-
cation of
Alfred's laws.

tific treatise of the whole body of the common law. He wrote this about the close of the reign of Henry III, a very few years after the date of Magna Charta. We consider this book as the more valuable, as it was written about the time which divides the common and statute law, and therefore gives us the former in its ultimate state. Bracton, too, was an ecclesiastic, and would certainly not have failed to inform us of the adoption of Christianity as a part of the common law, had any such adoption ever taken place. But no word of his, which intimates anything like it, has ever been cited. Fleta and Britton, who wrote in the succeeding reign (of Edward I), are equally silent. So also is Glanvil, an earlier writer than any of them (to wit: *tempore* Henry II), but his subject perhaps might not have led him to mention it. It was reserved then for Finch, five hundred years after, in the time of Charles II, by a falsification of a phrase in the Year Book, to open this new doctrine, and for his successors to join full-mouthed in the cry, and give to the fiction the sound of fact. Justice Fortescue Aland, who possessed more Saxon learning than all the judges and writers before mentioned put together, places this subject on more limited ground. Speaking of the laws of the Saxon kings, he says: "The ten commandments were made part of their law, and consequently were *once* part of the law of England; so that to break any of the ten commandments was then esteemed a breach of the common law of England; and why it is not so now, perhaps it may be difficult to give a good reason." Preface to Fortescue's reports, xvii. The good reason is found in the denial of the fact.

Houard, in his *Coutumes Anglo-Normandes*, 1, 87, notices the falsification of the laws of Alfred by prefixing to them four *chapters of the Jewish law,

[*141]

to wit: the twentieth, twenty-first, twenty-second, and twenty-third chapters of Exodus, to which he might have added the fifteenth of the Acts of the Apostles, verses 23 to 29, and precepts from other parts of the Scripture. These he calls a *hors d'œuvre* of some pious copyist. This awkward monkish fabrication makes the preface to Alfred's genuine laws stand in the body of the work, and the very words of Alfred himself prove the fraud; for he declares in that preface that he has collected these laws from those of Ina, of Offa, Aethelbert, and his ancestors, saying nothing of any of them being taken from the Scripture. It is still more certainly proved by the inconsistencies it occasions. For example, the Jewish legislator, Exodus xxi, 12, 13, 14 (copied by the pseudo-Alfred, section 13), makes murder, with the Jews, death. But Alfred himself, laws, xxvi, punishes it by a fine only, called a weregild, proportioned to the condition of the person killed. It is remarkable that Hume (appendix I to his History) examining this article of the laws of Alfred, without perceiving the fraud, puzzles himself with accounting for the inconsistency it had introduced. To strike a pregnant woman so that she die, is death by Exodus xxi, 22, 23, and pseudo-Alfred, section 18; but by the laws of Alfred, ix, the offender pays a weregild for both the woman and child. To smite out an eye or a tooth, Exodus xxi, 24 to 27, pseudo-Alfred, sections 19, 20, if of a servant by his master, is freedom to the servant; in every other case, retaliation. But by Alfred's laws, xi, a fixed indemnification is paid. Theft of an ox, or a sheep, by the Jewish law, Exodus xxii, 1, was repaid fivefold for the ox and fourfold for the sheep; by the pseudograph, section 24, double for the ox, and fourfold for the sheep; but by Alfred's laws, xvi, he who stole a cow and a calf was to repay the worth of the cow and

Chapters
prefixed to
Alfred's laws.

Effect of this
fabrication
on the body
of laws of
Alfred's work.

Inconsistency
occasioned by this
interpolation.

Hume
notices the
inconsistency
without perceiving
the fraud.

Some of the
inconsistencies
occasioned by
the interpolation.

Some of the inconsistencies occasioned by the interpolation.

forty shillings for the calf. Goring by an ox was the death of the ox, and the flesh not to be eaten. Exodus xxi, 28 ; pseudo-Alfred, section 21. By the laws of Alfred, xxiv, the wounded person had the ox. This pseudograph makes municipal laws of the ten commandments ; sections 1 to 10 regulate concubinage ; section 12 makes it death to strike or to curse father or mother ; sections 14, 15, give eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe ; section 19 sells the thief to repay his theft ; section 24 obliges the fornicator to marry the woman he has lain with ; section 29 forbids interest on money ; sections 28, 35 make the laws of bailment very different from what Lord Holt delivers in *Coggs v. Bernard*, and what Sir William Jones tells us they were ; and punishes witchcraft with death, section 30, which Sir Matthew Hale, 1 Hale's Pleas of the Crown, chapter 33, declares was not a felony before the statute 1, James, chapter 12.

The interpolation not recognized as authority by Sir Matthew Hale.

Hale's affirmation of his belief in witches.

It was under that statute that he hung Rose Cullender and Amy Duny, 16 Charles II (1662), on whose trial he declared "that there were such creatures as witches, he made no doubt at all ; for, first, the Scripture had affirmed so much ; second, the wisdom of all nations had provided laws against such persons, and such hath been the judgment of this kingdom, as appear by that act of Parliament which hath provided punishment proportionable to the quality of the offense." And we must certainly allow greater weight to this position "that it was no felony till James's statute," deliberately laid down in his Hale's Pleas of the Crown, a work which he wrote to be printed, and transcribed for the press in his lifetime, than to the hasty scriptum that "at common law witchcraft was punished with death as heresy, by writ *de heretico comburendo*" in his methodical

Hale's Pleas of the Crown more authoritative than his hasty methodical summary.

summary of the Pleas of the Crown (page 6), a work "not intended for the press, not fitted for it, and which he declared himself he had never read over since it was written" (preface); unless we understand his meaning in that to be that witchcraft could not be punished at common law as witchcraft, but as heresy. In either sense, however, it is a denial of this pretended law of Alfred.

Methodical summary not intended for publication.

Now all men of reading know that these pretended laws of homicide, concubinage, theft, retaliation, compulsory marriage, usury, bailment, and others which might have been cited from this pseudograph, were never the laws of England, not even in Alfred's time; and, of course, that it is a forgery. Yet, palpable as it must be to a lawyer, our judges have piously avoided lifting the veil under which it was shrouded. In truth, the alliance between church and state in England has ever made their judges accomplices in the frauds of the clergy; and even bolder than they are; for instead of being contented with the surreptitious introduction of these four chapters of Exodus, they have taken the whole leap, and declared at once that the whole Bible and Testament in a lump, make a part of the common law of the land; the first judicial declaration of which was by this Sir Matthew Hale. And thus they incorporate into the English code, laws made for the Jews alone, and the precepts of the gospel, intended by their benevolent Author as obligatory only *in foro concientiæ*; and they arm the whole with the coercions of municipal law. They do this, too, in a case where the question was not at all whether Christianity was a part of the law of England, but simply

Certain provisions of the pseudograph were never the laws of England.

The fraud, however, has been studiously enshrouded.

Church and state in England has always been upheld by fraud.

Sir Matthew Hale makes the first judicial decision on the subject.

The precepts of the gospel obligatory only *in foro concientiæ*.

¹ A summary of the doctrine that "Christianity is a part of the common law," is given in Blackstone's Commentaries, book iv, page *40 *et seq.*, from which can be obtained a modified view of the desires of modern religious "reformers" and Sunday-law advocates, who hold so

Question
under consid-
eration.

how far the ecclesiastical law was to be respected by the common law courts of England, in the special case of a right of presentment; thus identifying Christianity with the ecclesiastical law of England.

Effect of
principles of
religious lib-
erty.

tenaciously to this doctrine. The subject is treated under eleven heads in a chapter on "Offenses against God and Religion." The advancing principles of religious freedom and equality of rights for all, have now and then modified the penalties, or relegated the statutes to the background; yet the old doctrine is still maintained; and, when the power is not lacking, the "dissenter" from the dominant religion is still made to feel the "iron hand of law." Blackstone says:

State crimes
against God.

"First, then, of such crimes and misdemeanors as more immediately offend Almighty God, by openly transgressing the precepts of religion, either natural or revealed: and mediately, by their bad example and consequence, the law of society also: which constitutes that guilt in the action which human tribunals are to censure.

Apostasy.

"1. Of this species the first is that of *apostasy*, or a total renunciation of Christianity, by embracing either a false religion, or no religion at all. This offense can only take place in such as have once professed the true religion. The perversion of a Christian to Judaism, paganism, or other false religion, was punished by the emperors Constantius and Julian with confiscation of goods; to which the emperors Theodosius and Valentinian added capital punishment, in case the apostate endeavored to pervert others to the same iniquity: a punishment too severe for any temporal laws to inflict upon any spiritual offense; and yet the zeal of our ancestors imported it into this country; for we find by Bracton that in his time apostates were to be burnt to death. . . .

Capital
punishment.

Apostates
to be burnt
in England.

Heresy.

[*45]

"2. A second offense is that of *heresy*, which consists not in a total denial of Christianity, but of some of its essential *doctrines, publicly and obstinately avowed; being defined by Sir Matthew Hale, "sententia rerum divinarum humano sensu excogitata, palam docta et pertinaciter defensa." And here it must also be acknowledged that particular modes of belief or unbelief, not tending to overturn Christianity itself, or to sap the foundations of morality, are by no means the object of coercion by the civil magistrate. What doctrine shall therefore be adjudged heresy was left by our old constitution to the determination of the ecclesiastical judge; who had herein a most arbitrary latitude allowed him. For the general definition of an heretic given by Lyndewode, extends to the smallest deviation from the doctrines of holy church: "hæreticus est qui dubitat de fide catholica, et qui negligit servare ea, quæ Romana ecclesia statuit, seu servare decreverat." Or, as the statute 2 Henry IV, chapter 15, expresses it in English, "teachers of erroneous opinions, contrary to the faith and blessed determinations

Arbitrary
latitude al-
lowed to the
ecclesiastical
judge.

Definition
of "heretic."

of the holy church." Very contrary this to the usage of the first general councils, which defined all heretical doctrines with the utmost precision and exactness. And what ought to have alleviated the punishment, the uncertainty of the crime, seems to have enhanced it in those days of blind zeal and pious cruelty. It is true that the sanctimonious hypocrisy of the canonists went at first no farther than enjoining penance, excommunication, and ecclesiastical deprivation for heresy; though afterwards they proceeded boldly to imprisonment by the ordinary, and confiscation of goods *in pios usus*. But in the meantime they had prevailed upon the weakness of bigoted princes to make the civil power subservient to their purposes, by making heresy not only a temporal, but even a capital, offense: the Romish ecclesiastics determining, without appeal, whatever they pleased to be heresy, and shifting off to the secular arm the odium and drudgery of executions; with which they themselves were too tender and delicate to intermeddle. Nay, they pretended to intercede and pray, on behalf of the convicted heretic, *ut citra mortis periculum sententia circa eum moderatur*: well *knowing at the same time that they were delivering the unhappy victim to certain death. Hence the capital punishments inflicted on the ancient Donatists and Manichæans by the emperors Theodosius and Justinian; hence also the constitution of the emperor Frederic mentioned by Lyndewode, adjudging all persons without distinction to be burnt with fire, who were convicted of heresy by the ecclesiastical judge. . . . Christianity being thus deformed by the demon of persecution upon the continent, we cannot expect that our own island should be entirely free from the same scourge. . . . In the reign of Henry the Fourth, when the eyes of the Christian world began to open, and the seeds of the Protestant religion (though under the approbrious name of Lollardy) took root in the kingdom; the clergy taking advantage from the king's dubious title to demand an increase of their own power, obtained an act of Parliament, which sharpened the edge of persecution to its utmost keenness. For, by that statute, the diocesan alone, without the intervention of a synod, might convict of heretical tenets; and unless the convict abjured his opinions, or if after abjuration he relapsed, the sheriff was bound, *ex officio*, if required by the bishop, to commit the unhappy victim to the flames, without waiting for the consent of the crown. . . . By statute 1 Elizabeth, chapter 1, all former statutes relating to heresy are repealed, which leaves the jurisdiction of heresy as it stood at common law; viz., as to the infliction of common censures, in the ecclesiastical courts; and in case of burning the heretic, in the provincial senate only. . . . The principal point now gained was, that by this statute a boundary is for the first time set to what shall be accounted heresy; nothing for the future being to be so determined, but only such tenets, which have been heretofore so declared: (1) By the words of the canonical Scriptures; (2) By the first four general councils, or such *others as have only used the words of the Holy Scriptures; or, (3) Which shall

Usage of the councils.

Made a capital offense.

Pious pretensions.

[*46]

Persecution in England.

Sheriff must burn victim at command of bishop.

Heresy made more definite.

[*49]

Heresy
made more
definite.

A consoling
state of affairs !

Non-con-
formists.

Papists and
Protestant dis-
senters.

Blasphemy.

Christianity
a part of the
laws of Eng-
land.

[*60]

Witchcraft.

Punished by
death.

[*61]

Severity of
penalties.

hereafter be so declared by the Parliament, with the assent of the clergy in convocation. Thus was heresy reduced to a greater certainty than before ; though it might not have been the worse to have defined it in terms still more precise and particular : as a man continued still liable to be burnt for what perhaps he did not understand to be heresy till the ecclesiastical judge so interpreted the words of the canonical Scriptures.

“3. Another species of offenses against religion are those which affect the *established church*. And these are either positive or negative ; positive, by reviling its ordinances ; or negative, by non-conformity to its worship. . . . Non-conformists are of two sorts : first, such as absent themselves from divine worship in the established church, through total irreligion, and attend the service of no other persuasion. These, by the statutes of 1 Elizabeth, chapter 2 ; 23 Elizabeth, chapter 1 ; and 3 James I, chapter 4, forfeit one shilling to the poor every Lord’s day they so absent themselves, and twenty pounds to the king if they continue such default for a month together. And if they keep any inmate, thus irreligiously disposed, in their houses, they forfeit ten pounds per month. The second species of non-conformists are those who offend through a mistaken or perverse zeal. Such were esteemed by our laws, enacted since the time of the Reformation, to be papists and Protestant dissenters. . . .

“4. The fourth species of offenses, therefore, more immediately against God and religion, is that of *blasphemy* against the Almighty, by denying his being or providence ; or by contumelious reproaches of our Saviour Christ. Whither also may be referred all profane scoffing at the Holy Scripture, or exposing it to contempt and ridicule. These are offenses punishable at common law by fine and imprisonment, or other infamous corporal punishment (1 Hawkins’s Pleas of the Crown, 5) ; for Christianity is part of the laws of England (1 Ventris’s Reports, 293 ; 2 Strange’s Reports, 834).

“5. Somewhat allied to this, though in an inferior degree, is the offense of profane and common *swearing* and **cursing*. . . .

“6. A sixth species of offense against God and religion, of which our ancient books are full, is a crime of which one knows not well what account to give. I mean the offense of *witchcraft, conjuration, enchantment, or sorcery*. . . . The civil law punishes with death not only the sorcerers themselves, but also those who consult them, imitating in the former the express law of God, ‘Thou shalt not suffer a witch to live.’ And our own laws, both before and since the conquest, have been **equally penal* ; ranking this crime in the same class with heresy, and condemning both to the flames. . . . Our forefathers were stronger believers, when they enacted by statute 33 Henry VIII, chapter 8, all witchcraft and sorcery to be felony without benefit of clergy ; and again by statute 1 James I, chapter 12, that all persons invoking any evil spirit, or consulting, covenanting with, entertaining, employing, feeding, or rewarding any evil spirit ; or taking up dead

bodies from their graves to be used in any witchcraft, sorcery, charm, or enchantment; or killing or otherwise hurting any person by such infernal arts, should be guilty of felony without benefit of clergy, and suffer death. And if any person should attempt by sorcery to discover hidden treasure, or to restore stolen goods, or to provoke unlawful love, or to hurt any man or beast, though the same were not effected, he or she should suffer imprisonment and pillory for the first offense, and death for the second. These acts continued in force till lately, to the terror of all ancient females in the kingdom: and many poor wretches were sacrificed thereby to the prejudice of their neighbors, and their own illusions; not a few having, by some means or other, confessed the fact at the gallows. . . .

Capital crimes.

"7. A seventh species of offenders in this class are all *religious imposters*; such as falsely pretend an extraordinary commission from heaven; or terrify and abuse the people with false denunciations of judgments. These, as tending to subvert all religion, by bringing it into ridicule and contempt, are punishable by the temporal courts with fine, imprisonment, and infamous corporal punishment.

Religious imposters.

"8. Simony. . . .

"9. Profanation of the Lord's day, vulgarly (but improperly) called *Sabbath-breaking*, is a ninth offense against God and religion, punished by the municipal law of England. For, besides the notorious indecency and scandal of permitting any secular business to be publicly transacted on that day, in a country professing Christianity, and the corruption of morals which usually follows its profanation, the keeping one day in the seven holy, as a time of relaxation and refreshment as well as for public worship, is of admirable service to a state, considered merely as a civil institution. It humanizes, by the help of conversation and society, the manners of the lower classes, which would otherwise degenerate into a sordid ferocity and savage selfishness of spirit; it enables the industrious workman to pursue his occupation in the ensuing week with health and cheerfulness; it imprints on the minds of the people that sense of their duty to God, so necessary to make them good citizens, but which yet would be worn out and defaced by an unremitted continuance of labor, without any stated times of recalling them to the worship of their Maker. And therefore the laws of King Athelstan forbade all merchandizing on the Lord's day, under very severe penalties. And by the statute 27 Henry VI, chapter 5, no fair or market shall be held on the principal festivals, Good Friday, or any Sunday (except the four Sundays in harvest), on pain of forfeiting the goods exposed to sale. And since, by the statute 1 Charles I, chapter 1, no person shall assemble out of their own parishes, for any sport whatsoever upon this day; nor, in their parishes shall use any bull or *bear-baiting, interludes, plays, or other *unlawful* exercises, or pastimes; on pain that every offender shall pay three shillings four pence to the poor. This statute does not prohibit, but rather impliedly allows, any innocent recreation or

Sabbath-breaking.

A characteristic argument.

Severity of penalties.

[*64]

Provision of statute.

THE SOCIAL COMPACT.

WRITTEN BY JAMES MADISON.

Compact
theory a
fundamental
principle of
free govern-
ment.
Original
compact
implied.

Although the old idea of a compact between the government and the people be justly exploded, the idea of a compact among those who are parties to a government is a fundamental principle of free government.

The original compact is the one implied or presumed, but nowhere reduced to writing, by which a people agree to form one society. The next is a compact, here for the first time reduced to writing, by which the people in their social state agree to a government over them. These two compacts may be

amusement, within their respective parishes, even on the Lord's day, after divine service is over. But by statute 29 Charles II, chapter 7, no person is allowed to *work* on the Lord's day, or use any boat or barge, or expose any goods to sale; except meat in public houses, milk at certain hours, and works of necessity or charity, on forfeiture of five shillings. Nor shall any drover, carrier, or the like, travel upon that day, under pain of twenty shillings.

“10. Drunkenness. . . .”

“11. The last offense which I shall mention, more immediately against religion and morality, and cognizable by the temporal courts, is that of open and notorious *lewdness*. . . .”

Christianity
no part of
American
common law.

From the foregoing, it is evident that the idea that Christianity is a part of the common law of the American people, is not only contrary to the facts in the case, but it is contrary to reason, human right, and even to Christianity itself. As Jefferson says, Christianity was never intended to be enforced by law, but only *in foro conscientie*; and all attempts at compulsion are now, and always were, diametrically opposed to the teachings of the Author of Christianity. Religious legislation is the heritage that has been handed down to us from pagan times; and in all these laws can be seen the pagan superstitions. These superstitious ideas were on the statute books of the Roman empire, were adopted by a corrupted Christian church, and carried wherever the empire extended its dominion; were fraudulently engrafted on the common law of England by the supporters of the church, and have thus come down through the Puritans to us to-day — a relic of the superstitious ideas of the dark ages.

Descent of
religious legis-
lation.

A relic of
superstition.

considered as blended in the Constitution of the United States, which recognizes a union or society of States, and makes it the basis of the government formed by the parties to it.

Nature
of the American
compact.

It is the nature and essence of a compact, that it is equally obligatory on the parties to it, and, of course, that no one of them can be liberated therefrom without the consent of the others, or such a violation or abuse of it by the others as will amount to a dissolution of the compact.¹

Equally
obligatory
upon all.

It must not be forgotten that compact, express or implied, is the vital principal of free governments as contradistinguished from governments not free, and that a revolt against this principle leaves no choice but between anarchy and despotism.²

Importance
of the com-
pact theory.

The sovereignty of the society, as vested in and exercisable by the majority, may do anything that could be rightfully done by the unanimous concurrence of the members; the reserved rights of individuals (conscience, for example) in becoming parties to the original compact being beyond the legitimate reach of sovereignty, wherever vested or however viewed.³

Powers
of majorities.

Vested
rights beyond
their reach.

The government of the United States, like all governments free in their principles, rests on compact; a compact, not between the government and the parties who formed and live under it, but among the parties themselves; and the strongest of governments are those in which the compacts were most fairly formed and most faithfully executed.⁴

Our govern-
ment rests
on compact.

¹ "Writings of James Madison," volume iv, page 63.

² "Writings of James Madison," volume iv, page 294.

³ "Writings of James Madison," volume iv, page 422.

⁴ "Writings of James Madison," volume iv, pages 392, 393.

December
Term, 1849.

SUPREME COURT OF OHIO.

DECEMBER TERM, 1849.

PRESTON W. SELLERS v. GEORGE DUGAN.¹

Enactments
making Sun-
day contracts
illegal, rest on
the ground
that it is im-
moral.

Logical
consequence.

America's
glory.

Equal lib-
erty extends
to all.

Religious
precedents v.
American
principles.

CALDWELL, Justice, dissenting. . . . If an act, such as making a single contract on Sunday, that in its nature is not calculated to disturb the peace and quiet of the day, can be made the subject of legal supervision and penal enactment, *it can only be on the ground that it is abstractly wrong, immoral*. If the legislature can punish one act of this kind, they can another, and their power to persecute, to punish for whatever they may consider abstractly wrong, is unlimited. It is the glory of our country that the right of belief in any particular religious tenet without molestation on account thereof, *is granted to every one*; but this principle can only be preserved by extending it equally to the unbeliever. It is the same great indivisible principle that alike protects humanity, the birth-right of the whole, which each with equal reason may claim, should he believe any religious creed whatever; or should he disbelieve the whole.

¹ 18 Ohio, 489. The majority of the Supreme Court of Ohio decided, in this case, that "under the act of 1831, 'for the prevention of immoral practices,' a sale on Sunday of four hundred bushels of corn, is void, and no action for damages can be sustained for the breach of such contract." The judgment of the Supreme Court of Brown county, which had decided to the contrary, was accordingly reversed. From this decision Mr. Justice Caldwell dissented. Dissenting opinions have been a prominent characteristic in decisions on the constitutionality of Sunday laws; and, as is evident from the Supreme Court decisions following, the point of contention seems to be whether religious precedents or American principles shall prevail as the rule of decision in our State courts. Thus far the former rule has largely been followed; but the decisions adopting the latter have been by far the most able and best reasoned opinions.

We have been referred to the decisions of the court for authority upon this subject. Those decisions are all made on statutes essentially differing from our own. We know that many authorities can be found, both ancient and modern, that have gone as far as this decision in enforcing the observance of the Sabbath. We do not propose to examine them, for two reasons : one is the one mentioned above, that the statutes on which they are made differ from ours. Another is, that the pernicious and ruinous consequences of enforcing religious principle by legal enactment have been so well tested, and are so apparent, that any decision of the kind should not be regarded. Indeed, if I were to attempt to present the error into which, I think, the court have fallen in this decision, in its strongest light, I would do it by a reference to the action of the courts and legislative bodies, not only in Europe, but in some parts of this country, in its early settlement, in attempting to enforce the observance of the Sabbath by law. It always has and always will produce a pharisaical and hypocritical observance of a religious duty, and creates a spirit of censorious bigotry, and tends powerfully to destroy every religious feeling of the heart.

Other decisions.

Pernicious consequences of enforcing religious observances.

Parallels to decision of the court.

Effect of enforcing religious observances. [*497]

A previous decision.

Directly to the point.

I know of but one reported decision in the State ; that is the case of *Swisher's Lessee v. Williams's Heirs*, *Wright's Reports*, 754. The court there say : "The objection that the deed was executed on Sunday will not avail you. Both parties partook equally of the sin of violating the Sabbath, and the law does not require of us to enable either party to add to the sin, by breaking the faith pledged on that day, and commit a fraud out of assumed regard for the Sabbath day." This decision is directly in point, and, I think, good law. I think the decision of the court on the circuit was right, and should have been affirmed.

January
Term, 1850.

SUPREME COURT OF ARKANSAS.

JANUARY TERM, 1850.

SHOVER v. THE STATE.¹

Christianity
claimed to be
a part of our
common law.

The Christian religion is recognized as constituting part of the common law ; its institutions are entitled to profound respect, and may well be protected by law.

The Sabbath, properly called the Lord's day, is amongst the first and most sacred institutions of Christianity, and the act for the punishment of Sabbath-breaking (Digest, chapter 51, part 7, article 5, page 369) is not in derogation of the liberty of conscience secured to the citizen by the third section of the Declaration of Rights.

In an indictment under the above act for keeping open a grocery on Sunday, it is not necessary to aver that it was kept open with any criminal intent — keeping it open on that day is the gist of the offense.

When the fact of keeping the grocery open on the Sabbath is established, the law presumes a criminal intent, and the defendant must excuse himself by showing that charity or necessity required it.

Keeping a
grocery open
on Sunday is
criminal.

Keeping a grocery door open on the Sabbath is a temptation to vice, and therefore criminal.

In such an indictment it is not necessary to aver that the person charged with keeping open the grocery is the owner of it, but if alleged, it must be proven.

Any person who has control of a grocery, may be indicted for keeping it open on Sunday, whether he be owner or not.

APPEAL FROM THE HEMPSTEAD CIRCUIT COURT.

MR. CHIEF JUSTICE JOHNSON delivered the opinion of the court.

The indictment in this case is based upon the fifth section, chapter fifty-first, Digest. That section

¹ 5 English, 259. This decision and the State *v.* Ambs, *post* page 157, are inserted as representative of those upholding the constitutionality of Sunday laws. In the celebrated New York Supreme Court decision on Sunday laws, Mr. Justice Allen says that "in most States the [Sunday] legislation has been upheld by the courts and sustained by well-reasoned and able opinions,"—citing these decisions among others, as the leading decisions. It was originally intended to insert in this

Well-
reasoned and
able opinions.

enacts that "Every person who shall, on Sunday, keep open any store, or retail any goods, wares, or merchandise, or keep open any dram-shop or grocery, or sell or retail any spirits or wine, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than ten dollars nor more than twenty."

Arkansas
Sunday law.

The first objection taken is to the indictment, and is predicated upon the supposed unconstitutionality of the act by which the offense is created. If the act is unauthorized by the Constitution, it must arise from the fact that it interferes with the rights of conscience which are secured by all the Declaration of Rights. A portion of those rights consists in a freedom to worship Almighty God according to the dictates of every one's conscience, and in not being compellable to attend, erect, or support, any place of worship, or to maintain any ministry against their consent. The act in question cannot, with any degree of propriety, be said to trench upon any one of the rights thus secured. By reserving to every individual the sacred and indefeasible rights of conscience, the convention most certainly did not intend to leave it in his power to do such acts as are civil in *themselves and necessarily calculated to bring into contempt the most venerable and sacred institutions of the country. Sunday, or the Sabbath, is properly and emphatically called the Lord's day, and is one amongst the first and most sacred institutions of the Christian religion. This system of religion is recog-

Law
objected to
as unconstitu-
tional.

Objection
overruled.

The court
claims that the
convention did
not intend re-
ligious equal-
ity for all.
[*263]

work the New York decision also; but the New York Supreme Court not being a court of last resort, and as the decision itself would take about fifty pages, it is omitted. The decision is, however, probably the most able and exhaustive opinion presenting that view of the question. See 33 Barbour, 548-578. It is a noticeable fact that all of these decisions base the constitutionality of Sunday legislation upon the alleged fact that Christianity is a part of our common law, which, as shown in the Ohio Supreme Court decision and elsewhere, is a fallacy.

All institutions in any way connected with Christianity, said to be entitled to state protection.

nized as constituting a part and parcel of the common law, and as such all the institutions growing out of it, or in any way connected with it, in case they shall not be found to interfere with the rights of conscience, are entitled to the most profound respect, and can rightfully claim the protection of the law-making power of the State. (See the case of *Vidal et al. v. Gerard's Executors*, 2 Howard's Reports, 198.) We think it will readily be conceded that the practice against which the act is directed, is a great and crying vice, and that, in view of its exceedingly deleterious effects upon the body politic, there cannot be a doubt that it falls appropriately under the cognizance of the law-making power.

Gist of the offense.

The indictment is believed to have been drawn with technical accuracy, and to contain all the averments necessary under the statute to a full description of the offense. The very gist of the offense charged in the first count is the keeping open the grocery on Sunday, and it was not necessary that any criminal intent should have been alleged; as, upon the finding of the fact charged, the law presumes the intent, and unless the defendant is prepared to show that no such intent existed—as that it occurred in the exercise of acts of charity, or that, as a matter of necessity, he could not avoid it—the offense will be fully made out, and consequently nothing can remain to be done but to fix the penalty. The nature and tendency of the act prohibited furnish ample reason why the Legislature did not expressly require the intent to be expressed in the indictment as constituting a material part of the description of the offense. The act of keeping open a grocery on Sunday, is not, in itself, innocent or even indifferent; but it is, on the contrary, highly vicious and demoralizing in its tendency, as it amounts to a general invitation to the community to

Keeping open a grocery on Sunday said to be "highly vicious and demoralizing."

enter and indulge in the intoxicating cup, thereby *shocking their sense of propriety and common decency, and bringing into utter contempt the sacred and venerable institution of the Sabbath. It is not simply the act of keeping open a grocery, but the keeping of it open on Sunday, that forms the head and front of the offense; and when it is alleged to have been done on *that day*, the description is perfect.¹

[*264]
Not the *act*,
but the *disre-*
gard of Sun-
day, that forms
"the head and
front of the of-
fense."

If the objection to the first count be admissible as failing to give a full and perfect description of the offense, we can perceive no good reason why it should not apply with equal force to the second, as it is silent also as to the intent. The charge in the latter count is, that the defendants sold spirits on Sunday, and it is wholly silent as to the intent with which the act was done. It certainly would not be contended that an indictment for selling spirits on Sunday should further aver that it was sold with intent to have it drunk. The Legislature did not conceive the act of selling to be any worse in point of criminality than that of keeping the grocery open, and consequently they have placed them both upon precisely the same footing. They have the unquestionable right, so long as they keep themselves within the pale of the Constitution, to command the performance of such acts as are right, and to prohibit such as they may conceive,

Charge in
second count.

¹ In this decision the object of Sunday laws is forcibly expressed. The intention is to guard the sanctity of that day. And, although, as in this decision, the claim is made that "all the institutions growing out of," "or in any way connected with," the Christian religion, are entitled to state protection,—and this would include baptism, the Lord's supper, etc., as well as the so-called Lord's day,—yet it is constantly denied that Sunday legislation is religious legislation. No matter how many Sabbatarians go to jail and have their property taken away in fines, still it is claimed that these laws are "civil regulations" for the preservation of the public health by keeping people from working too hard! No matter how many unbelievers are similarly treated for speaking against the Bible, still it is claimed that thus interfering with free thought does not abridge their liberty!

Object of
Sunday laws.

Power of
Legislature.

in their wisdom, to be wrong; and their right is equally indisputable to say whether the intention shall be preserved from the mere act prohibited, or whether, in addition to such act, the State shall also show the intent which prompted its commission.

Sufficiency
of testimony.

The next objection relates to the sufficiency of the testimony to warrant the conviction. It is manifest from the whole tenor of the evidence as exhibited by the bill of exceptions, that both parties, as well the State as the defendant, considered it essential to a conviction that the ownership of the grocery should have been proven before the jury. This the statute did not require; but, having unnecessarily averred the fact of ownership, it devolved upon the State to prove it in order to authorize a conviction. The act merely forbids the keeping of a grocery open on Sunday. It certainly cannot be material whether it shall be done by the party having the legal title, or
[*265] by any other *individual having the control of the establishment at the time of the commission of the alleged offense. If it were incumbent upon the State to show title to the grocery before a conviction could be had for keeping it open on Sunday, it would, in the very nature of things, be utterly impossible, in many cases, to effectuate the objects of the law. The true question, therefore, under the statute is not, Who is the owner of the grocery? but, Who is shown to have had the control of it at the time of the commission of the act? The State, in this case, did introduce some slight circumstances tending to establish the allegation of ownership, but utterly failed to prove that the defendant had been guilty of keeping the grocery open on Sunday.

Judgment
of the court.

The judgment of the Circuit Court of Hempstead county is, therefore, reversed, and the cause remanded with instructions to proceed therein according to law, and not inconsistent with this opinion.

SUPREME COURT OF OHIO.

December
Term, 1853.

DECEMBER TERM, 1853.

HIRAM BLOOM v. CORNELIUS RICHARDS.

THURMAN, Justice. . . . The English common law, *so far as it is reasonable in itself, suitable to the condition and business of our people, and consistent with the letter and spirit of our federal and State Constitutions and statutes*, has been and is followed by our courts, and may be said to constitute a part of the common law of Ohio. But wherever it has been found wanting in either of these requisites, our courts have not hesitated to modify it to suit our circumstances, or, if necessary, to wholly depart from it. *Lessee of Lindsley v. Coates*,¹ 1 Ohio, 243; Ohio Code, 116.

How far the English common law is to be recognized here.

Christianity, then, being a part of the common law of England,² there was some, though insufficient, foun-

¹ In this decision, the court said: "It has been repeatedly determined by the courts of this State that they will adopt the principles of the common law as the rules of decision, so far only as those principles are adapted to our circumstances, state of society, and form of government."

² Even the concession that Christianity was rightfully a part of the common law of England, was strongly combated by Jefferson. Nevertheless, that Christianity is now universally *recognized* as constituting a part of the English common law, cannot be denied; but, on the other hand, it cannot be denied, either, that *it came to be recognized contrary to the principles of the common law*. Jefferson's comments show this very plainly. In America, however, Christianity forms no part of the common law, because state Christianity has been superceded by religious liberty—the equality of all religions. This liberty, according to the "Century Dictionary," is "the right of freely adopting and professing opinions on religious subjects, and of worshiping or refraining from worship according to the dictates of conscience, without external control;" and this liberty is a right, not simply a privilege. The American government recognizes the self-evident truth that "all men are created equal;" that governments are instituted for the protection of all alike,

Christianity and the common law of England.

America's new system.

All men equal.

Man not accountable to any individual for opinion.

whether religious or non-religious ; and that man is accountable to God alone for matters of opinion. The principles of Christianity were never intended to be *forced* upon men. Therefore, engrafting Christianity upon the common law was not only contrary to the principles of the common law, but was also contrary to the principles of Christianity itself. In a letter to Major John Cartwright, Jefferson wrote as follows:

Usurpation of English judges.

"I was glad to find in your book a formal contradiction, at length, of the judiciary usurpation of legislative powers, for such the judges have usurped in their repeated decisions that Christianity is a part of the common law. The proof of the contrary, which you have adduced, is incontrovertible ; to wit, that the common law existed while the Anglo-Saxons were yet pagans, at a time when they had never yet heard the name of Christ pronounced, or knew that such a character had ever existed. But it may amuse you to show when and by what means they stole this law in upon us. In a case of *quare impedit* in the Year Book 34, Hilary Term 6, folio 38 (anno 1458), a question was made how far the ecclesiastical law was to be respected in a common law court. And Prisot, Chief Justice, gave his opinion in these words : ' A tiels leis que ils de seint eglise ont en *ancien scripture*, covient à nous à donner credence ; car ceo common ley sur quel tous manners leis sont fondés : et auxy, sin, nous sumus obligés de conustre lour ley de seint eglise : et semblablement ils sont obligés de conustre nostre ley ; et, sin, si poit apperer or à nous que l'evesque ad fait come un ordinary fera en tiel cas, adong nous devons ceo adjuger bon, ou auterment nemy,' etc. [For translation, see *ante* page 128, note 1.] See third chapter ; Fitzherbert's Abridgment, *quare impedit*, 89 ; Brooke's Abridgment, *quare impedit*, 12. Finch, in his first book, chapter 3, is the first afterwards who quotes this case and mistakes it thus : ' To such laws of the church as have warrant in *Holy Scripture*, our law giveth credence,' and cites Prisot ; mistranslating '*ancien scripture*' into '*Holy Scripture*.' Whereas Prisot palpably says, ' To such laws as those of holy church have in *ancient writing*, it is proper for us to give credence ; ' to wit, to their *ancient written* laws. This was in 1613, a century and a half after the dictum of Prisot. Wingate, in 1658, erects this false translation into a maxim of the common law, copying the words of Finch, but citing Prisot. Wingate's Maxims, 3. And Sheppard, title ' Religion,' in 1675, copies the same mistranslation, quoting the Year Book, Finch, and Wingate. Hale expresses it in these words : ' Christianity is parcel of the laws of England.' 1 Ventris's Reports, 293 ; 3 Keble's Reports, 607. But he quotes no authority.

How Christianity was grafted on the common law.

Finch's mistranslation.

Statements of others.

Echoings and re-echoings of the statements.

"By these echoings and re-echoings from one to another, it had become so established in 1728, that in the case of *King v. Woolston*, 2 Strange, 384, the court would not suffer it be to debated whether to write against Christianity was punishable in the temporal court at common law. Wood, therefore, 409, ventures still to vary the phrase, and say that all blasphemy and profaneness are offenses by the common law ; and cites

dation for the saying of Chief Justice Best, above quoted.¹ But the Constitution of Ohio having de-

Foundation
insufficient.

2 Strange. Then Blackstone, in 1763, iv, 59, repeats the words of Hale, that 'Christianity is part of the laws of England,' citing Ventris and Strange. And, finally, Lord Mansfield, with a little qualification, in Evans's case, in 1767, says that 'the essential principles of revealed religion are part of the common law.' Thus engulfing Bible, Testament, and all, into the common law, without citing any authority. And thus we find this chain of authority hanging link by link, one upon another, and all ultimately on one and the same hook, and that a mis-translation of the words '*ancien scripture*,' used by Prisot. Finch quotes Prisot; Wingate does the same. Sheppard quotes Prisot, Finch, and Wingate. Hale cites nobody. The court in Woolston's case cites Hale. Wood cites Woolston's case. Blackstone quotes Woolston's case and Hale; and Lord Mansfield, like Hale, ventures it on his own authority. Here I might defy the best-read lawyer to produce another scrip of authority for this judiciary forgery; and I might go on further to show how some of the Anglo-Saxon priests interpolated into the text of Alfred's laws, the twentieth, twenty-first, twenty-second, and twenty-third chapters of Exodus, and the fifteenth of the Acts of the Apostles, from the twenty-third to the twenty-ninth verses. But this would lead my pen and your patience too far. What a conspiracy this, between church and state!" "Works of Thomas Jefferson," volume vii, page 359 *et seq.* See *ante* page 127 *et seq.*

Summary of
authorities.

What a con-
spiracy be-
tween church
and state!

¹ In the paragraph to which reference is here made, Judge Thurman declared: "I am aware that in *Smith v. Sparrow*, 12 English Common Law, 254, Chief Justice Best said 'that he should have considered that if two parties act so indecently as to carry on their business on a Sunday, if there had been no statute on the subject, neither could recover.' But this was a mere dictum, the unsoundness of which is rendered apparent by a multitude of authorities. The Chief Justice cited no case in its support, and I have been unable to discover a single one to uphold it. Very rarely has it been pretended, even in argument, that a contract, entered into on a Sunday, is, for that reason, void at the common law; and those who have so pretended, placed their chief, if not sole, reliance upon the saying of Lord Coke, that 'the Christian religion is part of the common law;' and upon what appears in 2 Coke's Institutes, 220, where, after citing a Saxon law of King Ethelstan, in these words, '*Die autem dominico nemo mercaturam facito; id quod si quis egerit, et ipsa merce, et triginta præterea solidis mulctator*,' he adds: 'Here note, by the way, that no merchandizing should be on the Lord's day.' But, after considering these very observations, Lord Mansfield, in *Drury v. Defontaine*, 1 Taunton's Reports, 135, said that 'it does not appear that the common law ever considered those contracts as void which were made on Sunday.' And, accordingly, he gave a judgment for the price of a

Dictum of
Chief Justice
Best.

Its unsound-
ness apparent.

Pretensions
based on Lord
Coke's state-
ment.

Lord
Mansfield's
admission.

Human
rights.

No human
authority can
interfere with
rights of con-
science.

No religious
preference to
be given.

Christianity
not a part of
our law.

Rights, not
toleration, is
the American
theory.

[*391]

Decisions
unanimous.

Declaration
of United
States Senate.

Interesting
note.

clared "that all men have a natural and indefeasible right to worship Almighty God according to the dictates of conscience ; that no human authority can, in any case whatever, control or interfere with the rights of conscience ; that no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent ; and that no preference shall ever be given, by law, to any religious society or mode of worship, and no religious test shall be required as a qualification to any office of trust or profit," it follows that neither Christianity, nor any other system of religion, is a part of the law of this State. We sometimes hear it said that all religions are tolerated in Ohio ; but the expression is not strictly accurate.¹ Much less accurate is it to say that one religion is a part of our law and all others only tolerated. It is not mere toleration that every individual has here in his belief or disbelief. He reposes not upon the leniency of the government, or the liberality of any class or sect of men, but upon his natural, indefeasible rights of conscience, which, in the language of the Constitution, are beyond *the

horse sold on that day. That he was right, is apparent from numerous cases, among which are *Comyns v. Boyer*, Croke's Reports (Elizabeth), 485 ; *Rex v. Brotherton*, 1 Strange's Reports, 702 ; the *King v. White-nash*, 7 Barnwell and Cresswell's Reports, 596 ; same case, 14 English Common Law, 100 ; and *Bloxsome v. Williams*, 3 Barnwell and Cresswell's Reports, 232 ; same case, 10 English Common Law, 60. Indeed, so uniform are the authorities that Redfield, Justice, in *Adams v. Gay*, 19 Vermont, 365, said, in effect, that no case could be found holding a contract to be void at common law because executed on a Sunday. This remark, if not literally true, is so nearly so that, perhaps, the only case that seems opposed to it is *Morgan v. Richards*, decided in one of the inferior courts of Pennsylvania." 2 Ohio State, 389.

¹ On this point the United States Senate says : "*What other nations call religious toleration, we call religious rights. They are not exercised by virtue of governmental indulgence, but as rights, of which government cannot deprive any portion of citizens, however small. Despotism may invade those rights, but justice still confirms them.*" See an interesting note on this question, *ante* page 98, note 2.

control or interference of any human authority. We have no union of church and state, nor has our government ever been vested with authority to enforce any religious observance, simply because it is religious.

We have no union of church and state.

Government no authority to enforce any religious observance.

Of course, it is no objection, but on the contrary, is a high recommendation, to a legislative enactment, based upon justice or public policy, that it is found to coincide with the precepts of a pure religion; but the fact is nevertheless true, that the power to make the law rests in the legislative control over things temporal, and not over things spiritual. Thus the statute upon which the defendant relies, prohibiting common labor on the Sabbath, could not stand for a moment as a law of this State, if its sole foundation was the Christian duty of keeping that day holy, and its sole motive to enforce the observance of that duty.¹ For no power over things merely spiritual has ever been delegated to the government; while any preference of one religion over another, as the statute would give upon the above hypothesis, is directly prohibited by the Constitution.

Religious laws unconstitutional.

¹ On this point Mr. Rufus King, in his argument in the case of *Minor et al. v. Board of Education of Cincinnati et al.*, before the Superior Court of Cincinnati, said: "It is extraordinary that a man of such ability as the Judge [Hon. Allan G. Thurman] who delivered the decision in both cases [*Bloom v. Richards*, 2 Ohio State, 387, and *Mc Gatrack v. Wason*, 4 Ohio State, 566] should have failed to catch the salient hint so quickly taken by Judge Caldwell, dissenting in 18 Ohio, 489 [see *ante* pages 144, 145], and Judge Scott, in 9 Ohio State, 439, from the title and proviso of the act. He hastily overlooked the fact that the very title of the act is to prevent 'immoral practices,' and that the proviso exempts only 'those who do *conscientiously* observe the seventh day of the week *as the Sabbath*.' Why are they exempted?—why, but because they religiously observe another 'Sabbath'? Why, then, does the law of Ohio enforce the observance of Sunday? Manifestly the motive is religious. Without a doubt, it is reverence for that day as the Christian Sabbath. Stranger still was the learned Judge's oversight in failing to observe that this same 'Act for the prevention of immoral practices,' in another section, makes it penal to 'profanely swear by

Ohio Sunday law religious.

Other laws religious.

Language
of modern
English de-
cisions.

Government
not the guard-
ian of the
sanctity of any
day.

The Sabbath
of the Chris-
tian has no
right to pref-
erence over
that of any
other religion.

[*392]

"But to allow men to make bargains on the Sabbath is to let them desecrate that holy day, and it should not be granted that the legislature would suffer that." This is the language of the modern English cases, and perhaps it is consistently used in a country where Christianity is a part of the law, and in which there is an established church, and an omnipotent Parliament. But the General Assembly of Ohio is not, as we have shown, a guardian of the sanctity of any day. If it may protect the first day of the week from desecration because it is the Christian Sabbath, it may, in like manner, protect the sixth day because it is the holy day of the *Mahometan, and the seventh day because it is the Sabbath of the Jew and Seventh-day Baptist. Nay, more, it may protect the various festival days which, by some of the churches, are considered scarcely less sacred than the Sabbath day.

.

the name of God, Jesus Christ, or the Holy Ghost.' Here he would have found not only the motive and enforcement of a religious duty because it is Christian, but a recognition of the doctrine of the trinity itself." "Arguments in favor of the Bible in the Public Schools," page 135.

Ohio relig-
ious law dis-
criminate be-
tween days.

It regards
Sunday as
sacred.

In the decision of Mr. Justice Scott, referred to above, in which the Sunday law of Canton, Ohio, was declared void, and which received the unanimous approval of the court, it is declared: "The penalty imposed by this section *clearly indicates* the general policy of *discriminating between secular days and Sundays*, and of regarding the latter as a day of rest, upon which *common* labor, sports, and the employments therein named, are prohibited. But the *exceptions* which it contains are *equally expressive* of state policy. The statute proceeds on the principle that works of *necessity* may be performed on any day; that 'it is lawful to do good *even on the Sabbath day*;' and upon the further principle that *persons who conscientiously observe another day of the week as the Sabbath*, shall not be required to abstain from employments, otherwise lawful, on Sunday." City of Canton v. Nist, 9 Ohio State, 442.

Claim that
Sunday laws
are not based
on religion
contradicted
by all history.

Professor A. H. Lewis, in the preface to his "Critical History of Sunday Legislation" (pages viii, ix), says:

"Some now claim that Sunday legislation is not based on religious grounds. This claim is contradicted by the facts of all the centuries.

SUPREME COURT OF MISSOURI.

October
Term, 1854.

OCTOBER TERM, 1854.

THE STATE, RESPONDENT, v. AMBS, APPELLANT.¹

The main question argued in the briefs of the counsel in this case was, the constitutionality of the law exacting the observance of Sunday as a day of rest. It was maintained for the appellant, that the

Constitutionality of Sunday laws the main question.

Every Sunday law sprang from a religious sentiment. Under the pagan conception, the day was to be 'venerated' as a religious duty owed to the god of the sun. As the resurrection-festival idea was gradually combined with the pagan conception, religious regard for the day was also demanded in honor of Christ's resurrection. In the middle-age period, sacredness was obtained for Sunday because the Sabbath had been sacred under the legislation of the Jewish theocracy. Sunday was held supremely sacred by the Puritans, under the plea that the obligations imposed by the fourth commandment were transferred to it. There is no meaning in the statutes prohibiting 'worldly labor,' and permitting 'works of necessity and mercy,' except from the religious standpoint. There can be no 'worldly business,' if it be not in contrast with religious obligation. Every prohibition which appears in Sunday legislation is based upon the idea that it is wrong to do on Sunday the things prohibited. Whatever theories men may invent for the observance of Sunday on non-religious grounds, and whatever value any of these may have from a scientific standpoint, we do not here discuss; but the fact remains that such considerations have never been made the basis of legislation. To say that the present Sunday laws do not deal with the day as a religious institution, is to deny every fact in the history of such legislation. The claim is a shallow subterfuge."

Basis of every Sunday law.

Evidence in the laws themselves.

The claim is a shallow subterfuge.

Therefore, if a Sunday law could not constitutionally "stand for a moment" as a law of Ohio (or of any other State), if its sole foundation is religious obligation, and as all history and a critical examination of the statutes themselves show most conclusively that their sole foundation is religious obligation (as evidenced by the above quotations), the inevitable conclusion is that Sunday laws cannot constitutionally "stand for a moment" in any State of the Union.

Hence, all Sunday laws are unconstitutional.

¹ 20 Missouri, 214. The case was an appeal from the St. Louis Criminal Court to the Supreme Court of the State. Judge Scott delivered the opinion of the court.

laws enjoining an abstinence from labor on Sunday, under a penalty, and prohibiting the opening of ale and beer houses, and selling intoxicating liquors on that day, were dictated by religious motives, and consequently could not be sustained, being inconsistent with the State Constitution, which ordains that all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences ; that no man can be compelled to erect, support, or attend any place of worship ; that no human authority can control or interfere with the rights of conscience ; that no person can ever be hurt, molested, or restrained in his religious professions or sentiments, if he do not disturb others in their religious worship ; that no preference can ever be given by law to any sect or mode of worship.

Claimed
to be incon-
sistent with
Constitution.

All prefer-
ence uncon-
stitutional.

The statute compelling the observance of Sunday, as a day of rest from worldly labor, expressly provides that it shall not extend to any person who is a member of a religious society by whom any other than the first day of the week is observed as a Sabbath, so that he observed such Sabbath.

Exemption
made.

Those who question the constitutionality of our Sunday laws seem to imagine that the Constitution is to be regarded as an instrument framed for a State composed of strangers collected from all quarters of the globe, each with a religion of his own, bound by no previous social ties, nor sympathizing in any common reminiscences of the past ; that, unlike ordinary laws, it is not to be construed in reference to the state and condition of those for whom it was intended, but that the words in which it is comprehended are alone to be regarded, without respect to the history of the people for whom it was made.¹

Construc-
tion of our
Constitutions.

¹ Just the opposite of this is true. Those who question the constitutionality of our Sunday laws, believe that our Constitutions *are* to be construed in reference to the state and condition of those for whom they

It is apprehended, that such is not the mode by which our organic law is to be interpreted. We must regard the people *for whom it was ordained. It appears to have been made by Christian men. The Constitution, on its face, shows that the Christian religion was the religion of its framers. At the conclusion of that instrument, it is solemnly affirmed by its authors, under their hands, that it was done in the year of our Lord one thousand eight hundred and twenty—a form adopted by all Christian nations, in solemn public acts, to manifest the religion to which they adhere.

Interpretation of Constitution.

[*217]

Long before the convention which framed our Constitution was assembled, experience had shown that the mild voice of Christianity was unable to secure the due observance of Sunday as a day of rest. The arm of the civil power had interposed.¹ The con-

Argument for state aid to religion.

were intended, and that the history of our people and institutions is a powerful confirmation of the wording of our fundamental charters themselves. The wording of our Constitutions, the history of our nation, the teachings of our political philosophers,—all unite in declaring that “the words in which they are comprehended” mean just what they say; and the attempt to annul the provisions of our Constitutions for religious liberty and equality by establishing religious preferences, is a flagrant departure from the true American political system.

They mean what they say.

Flagrant departures from American polity.

¹ But this interposition on the part of the civil power is just what our American system has been protesting against. As Madison says, “We are teaching the world the great truth . . . that religion flourishes in greater purity without, than with, the aid of government.” *Ante* page 77. Jefferson, too, says the precepts of the gospel were “intended by their benevolent Author as obligatory only *in foro conscientia*.” And the report of the United States Senate declares that “our Constitution recognizes no other power than that of persuasion for enforcing religious observances.” *Ante* page 100. So it is the upholders of the constitutionality of Sunday laws—those who wish to force upon others the institution of the Christian religion, not the advocates of religious liberty—that are departing so radically from American principles. It is impossible to harmonize Sunday legislation with American institutions. Even in England the most able thinkers, the leading political philosophers, also hold Sunday legislation to be incompatible with liberty. Mr. John Stuart Mill says:

Religion purer without state aid, than with it.

Persuasion the only legitimate mode of enforcing religious observances.

Sunday-law
arguments.

vention sat under a law exacting a cessation from labor on Sunday (1 Edward's Compilation, 302). The journal of the convention will show that this law was obeyed by its members as such, by adjournments from Saturday until Monday. In the tenth section of the fourth article of the Constitution it is provided that if the Governor does not return a bill within ten days (Sundays excepted), it shall become a law without his signature. Although it may be said that this provision leaves it optional with the Governor whether he will consider bills or not on Sunday, yet regard

Sunday laws
infringe liberty.

"Another important example of illegitimate interference with the rightful liberty of the individual, not simply threatened, but long since carried into triumphant effect, is Sabbatarian legislation."

Cannot be
too strongly
protested
against.

And in reference to laws forbidding Sunday pastimes, Mr. Mill says :

"The only ground, therefore, on which restrictions on Sunday amusements can be defended, must be that they are religiously wrong : a motive of legislation which can never be too earnestly protested against. 'Deorum injuriæ Diis curæ.' It remains to be proved that society or any of its officers holds a commission from on high to avenge any supposed offense to Omnipotence, which is not also a wrong to our fellow-creatures. The notion that it is one man's duty that another should be religious, was the foundation of all the religious persecutions ever perpetrated, and if admitted, would fully justify them. Though the feeling which breaks out in the repeated attempts to stop railway traveling on Sunday, in the resistance to the opening of museums, and the like, has not the cruelty of the old persecutors, the state of mind indicated by it is fundamentally the same. It is a determination not to tolerate others in doing what is permitted by their religion, because it is not permitted by the persecutor's religion. It is a belief that God not only abominates the act of the misbeliever, but will not hold us guiltless if we leave him unmolested." "On Liberty," chapter 4, paragraph 19.

A statement
of the case.

And Lord Macaulay gives us the following truths concerning the nature of Christianity :

Nature of
Christianity.

"The real security of Christianity is to be found in its benevolent morality ; in its exquisite adaptation to the human heart ; in the felicity with which its scheme accommodates itself to the capacity of every human intellect ; in the consolation which it bears to the house of mourning ; in the light with which it brightens the great mystery of the grave. To such a system it can bring no addition of dignity or of strength, that it is part and parcel of the common law. It is not now for the first time left to rely on the force of its own evidences and the attractions of its own beauty."

State aid
honors it not.

being had to the circumstances under which it was inserted, can any impartial mind deny but that it contains a recognition of the Lord's day, as a day exempt by law from all worldly pursuits? The framers of the Constitution, then, recognized Sunday as a day to be observed, acting themselves under a law which exacted a compulsive observance of it. If a compulsive observance of the Lord's day, as a day of rest, had been deemed inconsistent with the principles contained in the Constitution, can anything be clearer than, as the matter was so plainly and palpably before the convention, a specific condemnation of the Sunday law would have been ingrafted upon it? So far from it, Sunday was recognized as a day of rest, when, at the same time, a cessation from labor on that day was coerced by a penalty. They, then, who ingrafted on our Constitution the prin-ciples of religious freedom therein contained, did not regard the compulsory observance of Sunday as a day of rest, a violation of those principles. They deemed a statute compelling the observance of Sunday necessary to secure a full enjoyment of the rights of conscience. How could those who conscientiously believe Sunday is hallowed time, to be devoted to the worship of God, enjoy themselves in its observance amidst all the turmoil and bustle of worldly pursuits, amidst scenes by which the day was desecrated, which they conscientiously believed to be holy? The Sunday law was not intended to compel people to go to church, or to perform any religious act, as an expression of preference for any particular creed or sect, but was designed to coerce a cessation from labor, that those who conscientiously believed that the day was set apart for the worship of God, might not be disturbed in the performance of their religious duties. Every man is free to use the day for the purpose for which it is set apart, or not, as he pleases. If he

Framers
of Constitu-
tion recognized
Sunday as a
day of rest.

[*218]

A question-
able statement.

Peculiar
liberty.

A claim that
Sunday laws
do not compel
religious wor-
ship.

A true state-
ment.

Any com-
pulsion in re-
ligion violates
rights.

Judge
Cooley's
statement.

Discrimina-
tion a violation
of rights.

Compulsory
religious acts
unconstitu-
tional.

sees proper to devote it to religious purposes, the law protects him from the disturbance of others; if he will not employ himself in religious duties, he is restrained from interrupting those who do. Thus the law, so far from affecting religious freedom, is a means by which the rights of conscience are enjoyed. It cannot be maintained that the law exacting a cessation from labor on Sunday compels an act of religious worship.¹ Because divines may teach their churches that the reverential observance of the Lord's day is an act of religious worship, it by no means follows that the prohibition of worldly labor on that day was designed by the General Assembly as an act of religion. Such an idea can only be based on the supposition of an entire ignorance in the Legislature of the nature of the worship which God exacts from his creatures. A compliance with the law, induced by a fear of its penalties, could never be regarded as an act acceptable to the Deity. No act of worship, unless dictated by heartfelt love, can be pleasing to the Almighty. God listens alone to the voice of the heart.

¹ Nor is it necessary to *compel an act of religious worship* in order to destroy religious liberty. The most veritable despotism can exist, and yet not compel acts of religious worship. To compel a man to *refrain from doing* that which he considers it his duty to do, infringes his rights just as truly as to *compel him to do* that which he considers it his duty to refrain from doing. *In both cases it is compelling him to violate his convictions.* Judge Cooley, on this point, says: "But the Jew [and it is equally true of all Sabbatarians] who is forced to respect the first day of the week, when his conscience requires of him the observance of the seventh also, may plausibly urge that *the law discriminates against his religion*, and by forcing him to keep a second Sabbath in each week, *unjustly*, though by indirection, *punishes him for his belief.*" "Constitutional Limitations," page *476. And Mr. Justice Burnett, in *Ex parte Newman* (9 California, pages 514, 515), declared: "When, therefore, the citizen is sought to be compelled by the Legislature to do any affirmative religious act, or to refrain from doing anything, because it violates simply a religious principle or observance, the act is unconstitutional."

Bearing in mind that our Constitution was framed for a peo-*ple whose religion was Christianity, who had long lived under, and experienced the necessity of, laws to secure the observance of Sunday as a day of rest, how remarkable would it have been, that they should have agreed to make common, by their fundamental law, a day consecrated from the very birth of their religion, and hallowed by associations dear to every Christian. Convert Sunday into a worldly day by law, and what becomes of Christianity? How can we reconcile the idea to our understanding, that a people professing Christianity would make a fundamental law by which they would convert Sunday into a wordly day? It would have been an act of deadly hostility to the religion they professed, exposing it to the danger of being reduced to the condition in which it was before the Roman world was governed by Christian princes. Though it might not be persecuted by the arm of the civil power, it would be driven by the annoyances and interruptions of the world to corners and by-places, in which to find a retreat for its undisturbed exercise.

[*219]
It would be just where its Author designed it to be.

How startling would the announcement be to the people of Missouri that, by their organic law, they had abolished Sunday as a day of rest, and had put it out of the power of their legislators ever to restore it as such! With what sorrow would the toil-worn laborer receive the intelligence that there was no longer by law a day of rest from his labor!¹ The poor

A peculiar argument.

¹ This is a characteristic appeal of Sunday-rest advocates. Sermons are preached and pages are written pleading for Sunday laws for the benefit of the poor laboring man. But yet one of the most prominent features of the prosecutions for Sunday work is that the laboring man is the victim of these "reform" agitators! A seventh-day Christian in Arkansas, a Mr. Swearingen, with his son, a lad seventeen years of age, was indicted and fined. Not having the money to pay the fine and costs, they were sent to jail. A horse of his was then sold, and afterwards the sheriff levied on his mare, harness, wagon, and a cow and calf to pay the

A characteristic appeal.

Prosecution of laboring men.

A peculiar
argument.

beasts of burden would soon find by experience that our laws were no longer tempered by the softening influences of Christianity, and all the social advantages, which great and good men have attributed to the observance of Sunday as a day of rest, would be taken away.¹

Assistance
furnished.

balance of the fine and costs, and their board while in jail. The bill was paid, however, by his brethren, and the release of his property secured. Another in Tennessee has already been helped to the extent of over four hundred dollars by the National Religious Liberty Association, and as he is being repeatedly arrested, it is impossible to tell what further assistance will be necessary. Hundreds of dollars have been furnished by this Association and the Seventh-day Adventist denomination to help the poor who have been arrested and fined or imprisoned in various States for conscientiously violating these religious laws.

Who it is
demanding
Sunday laws.

It is not the poor laboring men who are demanding these Sunday laws. It is the churches; and it is only by the most earnest and untiring efforts on their part that the laboring classes can be prevailed upon to indorse the Sunday bills. Even then failure is not infrequent, as is evident from the speech of Master Workman Millard F. Hobbs of the District of Columbia, *ante* pages 85, 86. Although claiming that the laboring people are so anxious for these laws, still the contrary state of affairs has been a matter of complaint on the part of the leaders in the movement. Rev. Wilbur F. Crafts, A. M., who for the past few years has been the leading worker for Sunday legislation, after setting forth in his recent work what he deems conclusive evidence of the benefit of compulsory Sabbath observance, says:

Admission
of Mr. Crafts.

Position
of laboring
class.

Sunday laws
oppress the
laborer.

“Blind to these great facts, a Shoe Lasters’ Union in Brooklyn at the publication of the new Penal Code of New York in 1882, adopted a paper which thus describes the Sabbath laws: ‘We learn with regret that the churches are joining hands with tyranny and capital for the purpose of suppressing liberty and oppressing the laborer’—sentiments representative of many labor organizations, which show that holiday Sundays prevent those who follow them from learning the a-b-c of political science, and keep them in such ignorance of the true meaning of liberty that they mistake its champions for oppressors.

Position of
educated men.
Sunday laws
interfere with
liberty.

Basis of
Sunday laws.

“Even educated men sometimes make the same blunder from infidel prejudices. John Stuart Mill characterizes ‘Sabbatarian legislation as an illegitimate interference with the rightful liberty of the individual,’ and with strange intellectual perversity affirms that ‘the only ground on which restrictions on Sunday amusements can be defended must be that they are religiously wrong.’” “The Sabbath for Man,” page 226.

¹This argument, although on a par with arguments generally for religious legislation, cannot fail to provoke a smile;—as though people

In conclusion, we are of the opinion that there is nothing inconsistent with the Constitution, as it was understood at the time of its adoption, with a law compelling the observance of Sunday as a day of rest. The Constitution itself recognizes that day as a day of rest, and from the circumstances under which it was done, we are warranted in the opinion that a power to *compel a cessation from labor on that day was not designed to be withheld from the General Assembly. [*220]

Sunday laws decided to be constitutional.

would not rest unless compelled to do so by law ! as though the working proclivities of people were so abnormally developed that the only means on earth of inducing the exhausted individual to stop working was to do so by shutting him up in the dark cell of some jail ! If an intelligent and free people do not have common sense enough to rest when they need it, how can they be trusted to eat the proper food, wear the proper clothes, take the proper amount of sleep, etc. ? Why not re-enact at once all the former sumptuary laws of England ? If the government has a right to take away the individual's freedom in the matter of rest, so also it has the right to take away his freedom in the matter of eating and sleeping. Mr. Justice Burnett, in *Ex parte Newman*, 9 California, 518, declares :

Peculiar ideas.

A pertinent question.

"The question arising under this act is quite distinguishable from a case where the Legislature of a State in which slavery is tolerated, passes an act for the protection of the slave against the inhumanity of the master in not allowing sufficient rest. In this State every man is a free agent, competent and able to protect himself, and no one is bound by law to labor for any particular person. Free agents must be left free, as to themselves. Had the act under consideration been confined to infants or persons bound by law to obey others, then the question presented would have been different. But if we cannot trust free agents to regulate their own labor, its times and quantity, it is difficult to trust them to make their own contracts. If the Legislature could prescribe the *days* of rest for them, then it would seem that the same power could prescribe the *hours* to work, rest, and eat."

Opinion of Mr. Justice Burnett.

Free agents should be left free.

Logical conclusion.

Mr. Chief Justice Ruffin of the Supreme Court of North Carolina, admits that it is religious, and not scientific, ground upon which Sunday legislation rests. In the case of the *State v. Williams*, 4 Iredell, 403, he said :

"The truth is, that it offends us, not so much because it disturbs us in practising for ourselves the religious duties, or enjoying the salutary repose or recreation of that day, as that it is, in itself, a breach of God's law, and a violation of the party's own religious duty."

Basis of Sunday laws.

April Term,
1858.

SUPREME COURT OF CALIFORNIA.

APRIL TERM, 1858.

EX PARTE NEWMAN.¹

Sunday law
unconstitu-
tional.

SUNDAY LAW UNCONSTITUTIONAL.—Per TERRY, Chief Justice.—The act of April, 1858, “for the better observance of the Sabbath,” is in conflict with the first and fourth sections of article first of the Constitution of the State, and is therefore void.

Religious
liberty, not re-
ligious tolera-
tion, intended
by Constitu-
tion.

CONSTITUTIONAL LAW.—RELIGIOUS TOLERATION.—The Constitution, when it forbids discrimination or preference in religion, does not mean merely to guarantee toleration, but religious liberty in its largest sense, and a perfect equality without distinction between religious sects. The enforced observance of a day held sacred by one of these sects, is a discrimination in favor of that sect, and a violation of the religious freedom of the others.

Power of
Legislature.

IDEM.—POWER OF THE LEGISLATURE.—Considered as a municipal regulation, the Legislature has no right to forbid or enjoin the lawful pursuit of a lawful occupation on one day of the week, any more than it can forbid it altogether.

Power of
government.

IDEM.—EXTENT OF POWER OF GOVERNMENT.—The governmental power only extends to restraining each one in the freedom of his conduct so as to secure perfect protection to all others from every species of danger to person, health, and property; that each individual shall be required so to use his own as not to inflict injury upon his neighbor; and these seem to be all the immunities which can be justly claimed by one portion of society from another, under a government of constitutional limitation.

IDEM.—ACT UNCONSTITUTIONAL.—The act in question is in intention and effect a discrimination in favor of one religious profession over all others, and as such is in violation of the Constitution.

Religious
equality en-
titled to pro-
tection.

IDEM.—RELIGIOUS EQUALITY ENTITLED TO PROTECTION.—Per BURNETT, Justice.—Our Constitutional theory regards all religions, *as such*, as equally entitled to protection, and equally unentitled to preference. When there is no ground or necessity upon which a principle can rest but a religious one, then the Constitution steps in and says that it shall not be enforced by authority of law.

¹9 California, 502. Field, Justice, dissented from the decision of the court, and, subsequently, when he became Chief Justice, in *Ex parte Andrews*, 18 California, 685, this decision was disapproved, and the dissenting opinion of Field, Justice, approved.

SUNDAY LAW UNCONSTITUTIONAL.—The Sunday law violates this provision of the Constitution, because it establishes a compulsory religious observance. It violates as much the religious freedom of the Christian as of the Jew. The principle is the same, whether the act compels us to do what we wish to do or what we wish not to do.

Principle
underlying
Sunday laws.

IDEM.—POWER OF LEGISLATURE.—If the Legislature has the power to establish a day of compulsory rest, it has the right to select the particular day.

Power of
Legislature.

IDEM.—PROTECTION OF CONSTITUTION.—The protection of the Constitution extends to every individual or to none. It is the individual that is intended to be protected. Every citizen has the right to vote and worship as he pleases, without having his motives impeached in any tribunal of the State. When the citizen is sought to be compelled by the Legislature to do any affirmative religious act, or to refrain from doing anything because it violates simply a religious principle or observance, the act is unconstitutional.

Extent of
protection of
Constitution.

IDEM.—A QUESTION OF LEGISLATIVE POWER.—The constitutional question is a naked question of legislative power, and the inquiry as to the reasons which operated on the minds of members in voting for the measure, is wholly immaterial.

CONSTITUTION CONSTRUED.—If section first of article first of the Constitution asserts a principle not susceptible of practical application, then it may admit of a question whether any principle asserted in the declaration of rights can be the subject of judicial enforcement. And if such a position be true, that the rights of property cannot be enforced by the courts against an act of the Legislature, a power is then conceded which renders the provisions of the other sections wholly inoperative.

Constitution
construed.

IDEM.—RIGHT TO POSSESS PROPERTY.—The right to possess and protect property is not more clearly protected by the Constitution, than the right to acquire it. The right to acquire is the right to use the proper means to attain the end; and the use of such means cannot be prohibited by the Legislature, except the peace and safety of the State require it.

Rights of
property.

IDEM.—Free agents must be left free, as to themselves. If they cannot be trusted to regulate their own labor, its times, and quantity, it is difficult to trust them to make their own contracts. If the Legislature can prescribe the *days* of rest for them, it would seem that the same power can prescribe the *hours* to work, rest, and eat.

Freedom of
the individual.

HABEAS CORPUS.

Newman, the petitioner, was tried, and convicted before a justice of the peace of the city of Sacramento, for a violation of the act of April tenth, 1858, entitled, "An act to provide for the better observance

Statement
of case.

Statement
of case.

[*504]

of the Sabbath," and was sentenced to pay a fine of fifty dollars, and the costs of the prosecution — twenty *dollars — or, in the default of the payment of such fine and costs, to be imprisoned thirty-five days. Failing to pay the fine and costs imposed, he was imprisoned. The petitioner is an Israelite, engaged in the business of selling clothing, at Sacramento. The offense of which he was convicted was the sale of goods on Sunday. Upon his imprisonment, he petitioned this court for a writ of *habeas corpus*, and prayed that he might be discharged from imprisonment, on the ground of the illegality of the same, by reason of the unconstitutionality of the act.

The writ was issued, and on the return thereof, the petitioner was discharged.

Decision
of Chief
Justice.

TERRY, Chief Justice.—The petitioner was tried and convicted before a justice of the peace for a violation of the act of April, 1858, entitled, "An act for the better observance of the Sabbath," and upon his failure to pay the fine imposed, was imprisoned.

The counsel for petitioner moves his discharge, on the ground that the act under which these proceedings were had is in conflict with the first and fourth sections of the first article of the State Constitution, and therefore void.

All men
equally free
and independ-
ent.

The first section declares, "All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness."

Equality of
all religions.

The fourth section declares, "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State."

The questions which arise in the consideration of the case, are : Questions arising.

1. Does the act of the Legislature make a discrimination or preference favorable to one religious profession, or is it a mere civil rule of conduct ?

2. Has the Legislature the power to enact a municipal regulation which enforces upon the citizen a compulsory abstinence from his ordinary lawful and peaceable avocations for one day in the week ?

There is no expression in the act under consideration which can lead to the conclusion that it was intended as a civil rule, as contradistinguished from a law for the benefit of religion. It is entitled, "An act for the better observance of the Sabbath," and the prohibitions in the body of the act are confined to the "Christian Sabbath." The law intended to favor religion.

It is, however, contended, on the authority of some of the decisions of other States, that, notwithstanding the pointed language *of the act, it may be construed into a civil rule of action, and that the result would be the same, even if the language were essentially different. Decisions of other States. [*505]

The fault of this argument is that it is opposed to the universally admitted rule which requires a law to be construed according to the intention of the law-maker, and this intention to be gathered from the language of the law, according to its plain and common acceptance. Interpretation of law.

It is contended that a civil rule requiring the devotion of one seventh of the time to repose, is an absolute necessity, and the want of it has been dilated upon as a great evil to society. But have the Legislatures so considered it? Such an assumption is not warranted by anything contained in the Sunday law. On the contrary, the intention which pervades the whole act is to enforce, as a religious institution, the observance of a day held sacred by the followers of Claims advanced.

Intention of Sunday law.

Intention
of Sunday law.

one faith, and entirely disregarded by all other denominations within the State. The whole scope of the act is expressive of an intention on the part of the Legislature to require a periodical cessation from ordinary pursuits, not as a civil duty, necessary for the repression of any existing evil, but in furtherance of the interests, and in aid of the devotions, of those who profess the Christian religion.

Principles
ahead of
precedents.

Several authorities, affirming the validity of similar statutes, have been cited from the reports of other States. While we entertain a profound respect for the courts of our sister States, we do not feel called upon to yield our convictions of right to a blind adherence to precedent; especially when they are, in our opinion, opposed to principle, and the reasoning by which they are endeavored to be supported is by no means satisfactory or convincing. In *Bryan v. Berry*, 6 California, 398, in reference to the decisions of other States, we said: "Decided cases are, in some sense, evidence of what the law is. We say in some sense, because it is not so much the decision as the reasoning upon which the decision is based, which makes it authority, and requires it to be respected."

Sense in
which precedents
are authority.

Leading
cases examined.

It will be unnecessary to examine all the cases cited by the district attorney. The two leading cases in which the question is more elaborately discussed than in the others, are the cases of *Sepect v. the Commonwealth*, 8 Barr, 313, and the *City Council v. Benjamin*, 2 Strobbart, 508, decided respectively by the Supreme Courts of Pennsylvania and South Carolina. These decisions are based upon the ground that the statutes requiring the observance of the Christian Sabbath, established merely a civil rule, and make no discrimination or preference in favor of any religion. By an examination of these cases, it will be seen that the position taken rests in mere assertion, and that not a single argument is adduced

Lack of
argument in
cases cited.

to prove that a preference in favor of the Christian religion is not given by the law. In the case in *8 [*506] Barr, the court said: "It [the law] intermeddles not with the natural and indefeasible right of all men to worship Almighty God according to the dictates of their own consciences; it compels none to attend, erect, or support any place of worship, or to maintain any ministry against his consent; it pretends not to control or interfere with the rights of conscience, and it establishes no preference for any religious establishment or mode of worship."

This is the substance of the arguments to show that these laws establish no preference. The last clause in the extract asserts the proposition broadly; but it is surely no legitimate conclusion from what precedes it, and must be taken as the plainest example of *petitio principii*. That which precedes it establishes that the law does not destroy religious toleration, but that is all.

Examina-
tion of argu-
ment.

Now, does our Constitution, when it forbids discrimination, or preference, in religion, mean merely to guarantee toleration? For that, in effect, is all which the cases cited seem to award, as the right of a citizen. In a community composed of persons of various religious denominations, having different days of worship, each considering his own as sacred from secular employment, all being equally considered and protected under the Constitution, a law is passed which in effect recognizes the sacred character of one of these days, by compelling all others to abstain from secular employment, which is precisely one of the modes in which its observance is manifested, and required by the creed of that sect to which it belongs as a Sabbath. Is not this a discrimination in favor of the one? Does it require more than an appeal to one's common sense to decide that this is a preference? And when the Jew or

More than
toleration in-
tended.

Compulsory
rest is compul-
sory Sabbath
observance.

Not an
answer.

seventh-day Christian complains of this, is it any answer to say, Your conscience is not constrained, you are not compelled to worship or to perform religious rites on that day, nor forbidden to keep holy the day which you esteem as a Sabbath? We think not, however high the authority which decides otherwise.

American
institutions in-
tend perfect
equality in
religion.

Our govern-
ment civil, not
religious.

When our liberties were acquired, our republican form of government adopted, and our Constitution framed, we deemed that we had attained not only toleration, but religious liberty in its largest sense—a complete separation between church and state, and a perfect equality without distinction between all religious sects.¹ “Our government,” says Mr. Johnson, in his celebrated Sunday mail report, “is a civil, and not a religious, institution: whatever may be the religious sentiments of citizens, and however variant, they are alike entitled to protection from the government, so long as they do not invade the rights of others.” And again, dwelling upon the danger of applying the powers of government to the furtherance and support of sectarian objects, he remarks, in language which should not be forgotten, but which ought to be deeply impressed on the minds of all who [*507] *desire to maintain the supremacy of our republican

Religio-polit-
ical combina-
tions always
dangerous.

system: “Extensive religious combinations to effect a political object are, in the opinion of the committee, always dangerous. The first effort of the kind calls for the establishment of a principle which would lay the foundation for dangerous innovation upon the spirit of the Constitution, and upon the religious

Foundation-
stone of relig-
ious liberty.

¹ See *Bloom v. Richards*, *ante* page 154; *Hale v. Everett*, 53 New Hampshire, 1; also *ante* page 98, note 2. The principle of absolute religious equality is the foundation-stone of religious liberty in this country. As Madison says, “Whilst we assert for ourselves a freedom to embrace, to profess, and to observe, the religion which we believe to be of divine origin, we cannot deny an equal freedom to them whose minds have not yet yielded to the evidence which has convinced us.”

rights of the citizens. If admitted, it may be justly apprehended that the future measures of the government will be strongly marked, if not eventually controlled, by the same influence. All religious despotism commences by combination and influence, and when that influence begins to operate upon the political institution of a country, the civil power soon bends under it, and the catastrophe of other nations furnishes an awful warning of the consequences. . . . What other nations call religious toleration, we call religious rights; they were not exercised in virtue of governmental indulgence, but as rights of which the government cannot deprive any portion of her citizens, however small. Despotism may invade those rights, but justice still confirms them. Let the national legislature once perform an act which involves the decision of a religious controversy, and it will have passed its legitimate bounds. The precedent will then be established, and the foundation laid for that usurpation of the divine prerogative in this country, which has been the desolating scourge of the fairest portions of the Old World. Our Constitution recognizes no other power than that of persuasion for enforcing religious observances."

Pernicious influence.

Inception of all religious despotism.

Religious rights inalienable.

A single religious decision by government a usurpation.

Unconstitutionality of forced religious observance.

Considered as a civil regulation.

We next come to the question whether, considering the Sunday law as a civil regulation, it is in the power of the Legislature to enforce a compulsory abstinence from lawful and ordinary occupation for a given period of time, without some apparent civil necessity for such action; whether a pursuit, which is not only peaceable and lawful, but also praiseworthy and commendable, for six days in the week, can be arbitrarily converted into a penal offense or misdemeanor on the seventh. As a general rule, it will be admitted that men have a natural right to do anything which their inclinations may suggest, if it be not evil in itself, and in no way impairs the rights

Individual rights.

Formation
of society.

of others.¹ When societies are formed, each individual surrenders certain rights,² and as an equivalent for that surrender, has secured to him the enjoyment of certain others appertaining to his person and property, without the protection of which society cannot exist. All legislation is a restraint on individuals, but it is a restraint which must be submitted to by all who would enjoy the benefits derived from the institutions of society.

A necessity
for the preservation of free
institutions.

[508]

Sphere of
government.

None should
be allowed to
encroach upon
rights of
others.

Justifiable
civil regulations.

Statement
of a principle.

Natural
rights inalienable.

It is necessary, for the preservation of free institutions, that there should be some general and easily recognized rule to determine the extent of governmental power, and establish a proper line of demarcation between such as are strictly legitimate and *such as are usurpations which invade the reserved rights of the citizen, and infringe upon his constitutional liberty. The true rule of distinction would seem to be that which allows the Legislature the right so to restrain each one, in his freedom of conduct, as to secure perfect protection to all others from every species of danger to person, health, and property; that each individual shall be required so to use his own as not to inflict injury upon his neighbor; and these, we think, are all the immunities which can be justly claimed by one portion of society from another, under a government of constitutional limitation. For these reasons the law restrains the establishment of tanneries, slaughter-houses, gunpowder depots, the discharge of fire-arms, etc., in a city, the sale of drugs and poisons, and the practice of physic

¹ As Mr. Herbert Spencer says: "Every man has the right to do whatsoever he wills, provided that in the doing thereof he infringes not the equal right of any other man."

² For the views of Mr. Jefferson and others upon this question, see *ante* page 69 *et seq.* The *natural* rights of man are inalienable; for governments have no legitimate power to take away what they were instituted to protect. As declared by the United States Senate, "Despotic power may invade those rights, but justice still confirms them."

by incompetent persons, and makes a variety of other prohibitions, the reason and sense of which are obvious to the most common understanding.

Legitimate prohibitions.

Now, when we come to inquire what reason can be given for the claim of power to enact a Sunday law, we are told, looking at it in its purely civil aspect, that it is absolutely necessary for the benefit of *his* [the individual's] health and the restoration of *his* powers, and in aid of this great social necessity, the Legislature may, for the general convenience, set apart a particular day of rest, and require its observance by all.

Reasons given for enactment of Sunday laws.

This argument is founded on the assumption that men are in the habit of working too much, and thereby entailing evil upon society; and that, without compulsion, they will not seek the necessary repose which their exhausted natures demand. This is to us a new theory, and is contradicted by the history of the past and the observation of the present. We have heard, in all ages, of declamations and reproaches against the vice of indolence; but we have yet to learn that there has ever been any general complaint of an intemperate, vicious, unhealthy, or morbid industry. On the contrary, we know that mankind seek cessation from toil, from the natural influences of self-preservation, in the same manner and as certainly as they seek slumber, relief from pain, or food to appease their hunger.

Argument founded on an incorrect assumption.

Man will rest for self-preservation.

Again: it may be well considered that the amount of rest which would be required by one half of society may be widely disproportionate to that required by the other. It is a matter of which each individual must be permitted to judge for himself, according to his own instincts and necessities. As well might the Legislature fix the days and hours for work, and enforce their observance by an unbending rule which shall be visited alike upon the weak and strong.

Some require more rest than do others.

Hours of work, also, might as well be compulsory

Sumptuary
laws a usur-
pation.

[*509]

An invasion
of natural
rights.

The truth.

Variety of
opinion.

A false pre-
tense.

Judiciary is
to protect con-
stitutional
rights.

Whenever such attempts are made, the law-making power leaves its legitimate sphere, and makes an incursion into the realms of physiology, and its enactments, like the sumptuary laws of the ancients, which prescribe the mode and texture of people's clothing, or similar laws which *might prescribe and limit our food and drink, must be regarded as an invasion, without reason or necessity, of the natural rights of the citizen, which are guaranteed by the fundamental law.

The truth is, however much it may be disguised, that this one day of rest is a purely religious idea. Derived from the Sabbatical institutions of the ancient Hebrew, it has been adopted into all the creeds of succeeding religious sects, throughout the civilized world ; and whether it be the Friday of the Mahometan, the Saturday of the Israelite, or the Sunday of the Christian, it is alike fixed in the affections of its followers, beyond the power of eradication ; and in most of the States of our Confederacy, the aid of the law to enforce its observance has been given, under the pretense of a civil, municipal, or police regulation.

But it has been argued that this is a question exclusively for the Legislature ; that the law-making power alone has the right to judge of the necessity and character of all police rules, and that there is no power in the judiciary to interfere with the exercise of this right.

One of the objects for which the judicial department is established, is the protection of the constitutional rights of the citizen. The question presented in this case is not merely one of expediency or abuse of power ; it is a question of usurpation of power. If the Legislature have the authority to appoint a time of compulsory rest, we would have no right to interfere with it, even if they required a cessation from

toil for six days in the week, instead of one. If they possess this power, it is without limit, and may extend to the prohibition of all occupations at all times.

Logical deductions from Sunday legislation.

While we concede to the Legislature all the supremacy to which it is entitled, we cannot yield to it the omnipotence which has been ascribed to the British Parliament, so long as we have a Constitution which limits its powers, and places certain innate rights of the citizen beyond its control.

Legislature not omnipotent.

It is said that the first section of article first of the Constitution is a common-place assertion of a general principle, and was not intended as a restriction upon the power of the Legislature. This court has not so considered it.

A characteristic claim.

In *Billings v. Hall*, 7 California, 1, Chief Justice Murray says, in reference to this section of the Constitution: "This principle is as old as the Magna Charta. It lies at the foundation of every constitutional government, and is necessary to the existence of civil liberty and free institutions. It was not lightly incorporated into the Constitution of this State, as one of those political dogmas designed to tickle the popular ear, and conveying no substantial meaning or idea, but as one of those fundamental principles of enlightened government, without a rigorous observance of which there could be neither liberty nor safety to the citizen."

A fundamental principle.

In the same case, Mr. Justice Burnett asserted the following *principles, which bear directly upon the question: "That among the inalienable rights declared by our Constitution as belonging to each citizen, is a right of acquiring, possessing, and protecting property. . . . That for the Constitution to declare a right inalienable, and at the same time leave the Legislature unlimited power over it, would be a contradiction in terms, an idle provision, proving that a Constitution was a mere parchment barrier,

It must be rigorously observed to insure liberty.

An inalienable right.

Ruinous
consequences
of a non-
enforcement
of bill of rights.

insufficient to protect the citizen, delusive, and visionary, and the practical result of which would be to destroy, not conserve, the rights it vainly assumed to protect."¹

Upon this point, I dissent from the opinion of the court in *Billings v. Hall*, and if I considered the question an open one, I might yet doubt its correctness ; but the doctrine announced in that opinion having received the sanction of the majority of the court, has become the rule of decision, and it is the duty of the court to see it is uniformly enforced, and that its application is not confined to a particular class of cases.

California
Supreme
Court enforces
constitutional
rights.

It is the settled doctrine of this court to enforce every provision of the Constitution in favor of the rights reserved to the citizen against a usurpation of power in any question whatsoever ; and although in a doubtful case we would yield to the authority of the Legislature, yet upon the question before us, we are constrained to declare that, in our opinion, the act in question is in conflict with the first section of article first of the Constitution, because, without necessity, it infringes upon the liberty of the citizen, by restraining his right to acquire property.

Sunday law
unconstitu-
tional.

And that it is in conflict with the fourth section of the same article, because it was intended as, and is in effect, a discrimination in favor of one religious profession, and gives it a preference over all others.

Discrimi-
nates in favor
of Christianity.

It follows that the prisoner was improperly convicted, and it is ordered that he be discharged from custody.

Madison's
assertion.

¹ Mr. Madison, in remonstrating against any infringement by the Legislature of Virginia upon the religious liberty of the individual, had occasion to assert the same principle : " Either, then, we must say that the will of the Legislature is the only measure of their authority, and that in the plentitude of that authority they may sweep away all our fundamental rights, or that they are bound to leave this particular right untouched and sacred." *Ante* page 37.

BURNETT, Justice.—The great importance of the constitutional principle involved, and the different view I take of some points, make it proper for me to submit a separate opinion. The question is one of no ordinary magnitude, and of great intrinsic difficulty. The embarrassment we might otherwise experience in deciding a question of such interest to the community, and in reference to which there exists so great a difference of opinion, is increased by the consideration that the weight of the adjudged cases is against the conclusion at which we have been compelled to arrive.

Importance of question.

Great difference of opinion.

In considering this constitutional question, it must be conceded that there are some great leading principles of justice, eternal and unchangeable, that are applicable at all times and under all circumstances. It is upon this basis that all Constitutions of *free government must rest. A Constitution that admits that there are many inalienable rights of human nature reserved to the individual, and not ceded to society, must, of logical necessity, concede the truth of this position. But it is equally true that there are other principles, the application of which may be justly modified by circumstances.

Eternal and unchangeable principles.

[*511]

It would seem to be true that exact justice is only an exact conformity to some law. Without law there could be neither merit nor demerit, justice nor injustice; and, when we come to decide the question whether a given act be just or unjust, we must keep in our view that system of law by which we judge it. As judged by one code of law, the act may be innocent; while, as judged by another, it may be criminal. As judged by the system of abstract justice (which is only that code of law which springs from the natural relation and fitness of things), there must be certain inherent and inalienable rights of human nature that no government can rightfully take away.

Justice a conformity to some law.

Abstract justice.

Retention
of individual
rights.

These rights are retained by the individual because their surrender is not required by the good of the whole. The just and legitimate ends of civil government can be practically and efficiently accomplished whilst these rights are retained by the individual. Every person, upon entering into a state of society, only surrenders so much of his individual rights as may be necessary to secure the substantial happiness of the community.¹ Whatever is not necessary to attain this end, is reserved to himself.

But, conceding the entire correctness of these views, it must be equally clear that the original and primary jurisdiction to determine the question what are these inalienable rights, must exist somewhere; and wherever placed, its exercise must be conclusive, in the contemplation of the theory upon all.

Sovereignty
of the people.

The power to decide what individual right must be conceded to society, originally existed in the sovereign people who made the Constitution. As they possessed this primary and original jurisdiction, their action must be final. If they exercised this power, in whole or in part, in the formation of the Constitution, their action, so far, is conclusive.

It must also be conceded that this power, from its very nature, must be legislative, and not judicial. The question is simply one of necessity — of abstract justice. It is a question that naturally enters into the mind of the law-maker, not into that of the law-expounder. The judicial power, from the nature of its functions, cannot determine such a question. Judicial justice is but conformity to the law as already made.

Judiciary
must abide by
Constitution.

If these views be correct, the judicial department cannot, in any case, go behind the Constitution, and by any original standard judge the justice or legality

¹ For a discussion of this question, see *ante* page 69 *et seq.*

of any single one or more of its provisions. The judiciary is but the creature of the Constitution, and cannot judge its creator. It cannot rise above the *source of its own existence. If it could do this, it could annul the Constitution, instead of simply declaring what it means. And the same may be said of any act of the Legislature, if within the limits of its discretion, as defined by the Constitution. Such an act of the Legislature is as much beyond the reach of the judiciary as is the Constitution itself. 1 Baldwin, 74; 1 Brockenborough, 203; 10 Peters, 478; 5 Georgia, 194. [*512]

Judiciary
a creature of
Constitution.

But it is the right and the imperative duty of this court to construe the Constitution and statutes in the last resort; and, from that construction, to ascertain the will of the law-maker. And the only legitimate purpose for which a court can resort to the principles of abstract justice, is to ascertain the proper construction of the law in cases of doubt. When, in the opinion of the court, a given construction is clearly contrary to the manifest principles of justice, then it will be presumed, as a case not free from doubt, that the Legislature never intended such a consequence. *Varick v. Briggs*, 6 Paige, 330; *Flint River Steamboat Company v. Foster*, 5 Georgia, 194. But when the intention is clear, however unjust and absurd the consequences may be, it must prevail, unless it contravenes a constitutional provision.

Duty of ju-
diciary to con-
strue Consti-
tution.

If these views be correct, it follows that there can be for this court no higher law than the Constitution; and in determining this question of constitutional construction, we must forget, as far as in us lies, that we are religious or irreligious men. It is solely a matter of construction, with which our individual feelings, prejudices, or opinions upon abstract questions of justice, can have nothing to do. The Constitution may have been unwisely framed. It may

Constitution
the supreme
law.

Limitations
of power.

British &
American
principles.

Difference
overlooked.

All prefer-
ence in relig-
ion unconsti-
tutional.

Equality of
all religions.

have given too much or too little power to the Legislature. But these are questions for the statesmen, not the jurist. Courts are bound by the law as it is.

The British Constitution differs from our American Constitutions in one great leading feature. It only classifies and distributes, but does not limit the powers of government; while our Constitutions do both. It is believed that this difference has been sometimes overlooked by our courts in considering constitutional questions; and English authorities followed in cases to which they could be properly applied. We often meet with the expression that Christianity is a part of the common law. Conceding that this is true, it is not perceived how it can influence the decision of a constitutional question. The Constitution of this State will not tolerate any discrimination or preference in favor of any religion; and, so far as the common law conflicts with this provision, it must yield to the Constitution. Our constitutional theory regards all religions, as such, equally entitled to protection, and all equally unentitled to any preference. Before the Constitution they are all equal. In so far as the principles found in all, or in

[*513] any one or more of the different *religious systems, are considered applicable to the ends legitimately contemplated by civil constitutional government, they can be embodied in our laws and enforced. But when there is no ground or necessity upon which a principle can rest, but a religious one, then the Constitution steps in, and says that you shall not enforce it by authority of law.

Provision
of Constitu-
tion.

The Constitution says that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State."

If we give this language a mere literal construction, we must conclude that the protection given is only

intended for the professor, and not for him who does not worship. "The free exercise and enjoyment of religious profession and worship," is the thing expressly protected by the Constitution. But, taking the whole section together, it is clear that the scope and purpose of the Constitution was to assert the great, broad principle of religious freedom for all — for the believer and the unbeliever. The government has no more power to punish a citizen when he professes no religion, than it has when he professes any particular religion.

Constitution construed.

Constitution intended religious freedom for all.

The act of the Legislature under consideration violates this section of the Constitution, because it establishes a compulsory religious observance; and not, as I conceive, because it makes a discrimination between different systems of religion. If it be true that the Constitution intended to secure entire religious freedom to all, without regard to the fact whether they were believers or unbelievers, then it follows that the Legislature could not create and enforce any merely religious observance whatever. It was the purpose of the Constitution to establish a *permanent* principle, applicable at all times, under all circumstances, and to all persons. If all the people of the State had been unbelievers, the act would have been subject to the same objection. So, if they had all been Christians, the power of the Legislature to pass the act would equally have been wanting. The will of the whole people has been expressed through the Constitution, and until this expression of their will has been changed in some authoritative form, it must prevail with all the departments of the State government. The Constitution, from its very nature as a permanent organic act, could not shape its provisions so as to meet the changing views of individuals. Had the act made Monday, instead of Sunday, a day of compulsory rest, the constitutional question would

Sunday laws compel religious observance.

A permanent principle established.

An important observation.

The principle involved.

Religious
compulsion
wrong in
itself.

have been the same. The fact that the Christian *voluntarily* keeps holy the first day of the week, does not authorize the Legislature to make that observance *compulsory*. The Legislature cannot compel the citizen to do that which the Constitution leaves him free to do or omit, at his election. The act violates as much the religious freedom of the Christian as of the Jew. Because the conscientious views of

[*514] *the Christian compel him to keep Sunday as a Sabbath, he has the right to object, when the Legislature invades his freedom of religious worship, and assumes the power to compel him to do that which he has the right to omit if he pleases. The principle is the same, whether the act of the Legislature *compels* us to do that which we wish to do or not to do.

An impor-
tant observa-
tion.

Sphere of
legislation.

The *compulsory* power does not exist in either case. If the Legislature has power over the subject, this power exists without regard to the particular views of individuals. The sole inquiry with us is, whether the Legislature can create a day of compulsory rest. If the Legislature has the power, then it has the right to select the particular day. It could not well do otherwise.

Constitu-
tional prin-
ciples.

Number to
be protected
immaterial.

The protection of the Constitution extends to *every* individual or to none. It is the individual that is intended to be protected. The principle is the same whether the many or the few are concerned. The Constitution did not mean to inquire how many or how few would profess or not profess this or that particular religion. If there be but a single individual in the State who professes a particular faith, he is as much within the sacred protection of the Constitution as if he agreed with the great majority of his fellow-citizens. We cannot, therefore, inquire into the particular views of the petitioner, or of any other individual. We are not bound to take judicial notice of such matters, and they are not matters of proof.

A single
individual
as much en-
titled to pro-
tection as
majority.

There may be individuals in the State who hold Monday as a Sabbath. If there be none such now, there may be in the future. And if the unconstitutionality of an act of this character depended, in any manner, upon the fact that a particular day of the week was selected, then it follows that any individual could defeat the act by professing to hold the day specified as his Sabbath. The Constitution protects the freedom of religious *profession* and *worship*, without regard to the sincerity or insincerity of the worshiper. We could not inquire into the fact whether the individual professing to hold a particular day as his Sabbath was sincere or otherwise. He has the right to profess and worship as he pleases, without having his motives inquired into. His motives in exercising a constitutional privilege are matters too sacred to be submitted to judicial scrutiny. Every citizen has the undoubted right to vote and worship as he pleases, without having his motives impeached in any tribunal of the State.

Questions involved.

Religious profession must be protected regardless of sincerity.

Motives not a matter of judicial investigation.

Under the Constitution of this State, the Legislature cannot pass any act, the legitimate effect of which is *forcibly* to establish any merely religious truth, or enforce any merely religious observances. The Legislature has no power over such a subject. When, therefore, the citizen is sought to be compelled by the Legislature to do any affirmative religious act, or to refrain from *doing anything, because it violates simply a religious principle or observance, the act is unconstitutional.

Unconstitutionality of forced religious observances.

[*515]

In considering the question whether the act can be sustained upon the ground that it is a mere municipal regulation, the inquiry as to the reasons which operated upon the minds of members, in voting for the measure, is, as I conceive, wholly immaterial. The constitutional question is a naked question of legislative power. Had the Legislature the power to

Considered as a civil regulation.

A question of legislative power.

do the particular thing done? What was that particular thing? It was the prohibition of labor on Sunday. Had the act been so framed as to show that it was intended by those who voted for it as simply a municipal regulation, yet if in fact it contravened the provision of the Constitution securing religious freedom to all, we should have been compelled to declare it unconstitutional for *that* reason. So, the fact that the act is so framed as to show that a different reason operated upon the minds of those who voted for it, will not prevent us from sustaining the act, if any portion of the Constitution conferred the power to pass it upon the Legislature.

Motives of the legislator effect not the unconstitutionality of Sunday laws.

Where the power exists to do a particular thing, and the thing is done, the reason which induced the act is not to be inquired into by the courts. The power may be abused, but the abuse of the power cannot be avoided by the judiciary. A court may give a wrong reason for a proper judgment; still, the judgment must stand. The members of the Legislature may vote for a particular measure from erroneous or improper motives. The only question with the courts is, whether that body had the power to command the particular act to be done or omitted. The view here advanced is sustained substantially by the decision in the case of *Fletcher v. Peck*, 6 Cranch, 131. It was urged, in argument, that the provision of the first section of the first article of the Constitution, asserting the "inalienable right of acquiring, possessing, and protecting property," was only the statement in general terms, on a general principle, not capable in its nature of being judicially enforced.

Motives of the legislator not a subject of judicial inquiry.

It will be observed that the first article contains a declaration of rights, and if the first section of that article asserts a principle not susceptible of practical application, then it may admit of a question whether

Construction of Constitution.

any principle asserted in this declaration of rights can be the subject of judicial enforcement. But that at least a portion of the general principle asserted in that article can be enforced by judicial determination, must be conceded. This has been held at all times, by all the courts, so far as I am informed.

Principles
susceptible of
enforcement.

The provisions of the sixteenth section of the first article, which prohibits the Legislature from passing any law impairing the obligation of contracts, is based upon essentially the same ground as the first section, which asserts the right to acquire, *possess, and defend property. The right substantially secured by both sections is the right of property. This right of property is the substantial basis upon which the provisions of both sections must rest. The reason of, and the end to be accomplished by, each section, are the same. The debtor has received property or other valuable consideration, for the sum he owes the creditor, and the sum, when collected by the creditor, becomes his property. The right of the creditor to collect from the debtor that which is due, is essentially a right of property. It is the right to obtain from the debtor property which is unjustly detained from the creditor.

Property
rights.

[*516]

If we take the position to be true, for the sake of the argument, that the right of property cannot be enforced by the courts against an act of the Legislature, we then concede a power that renders the restrictions of other sections inoperative. For example, if the Legislature has the power to take the property of one citizen, and give it to another without compensation, the prohibition to pass any law impairing the obligation of contracts, could readily be avoided. All the Legislature would have to do to accomplish this purpose, would be to allow the creditor first to collect his debt, and afterwards take the property of the creditor, and give it to the debtor. For if we once

Property
rights enforce-
able by the
judiciary.

Property
rights.

concede the power of the Legislature to take the property of A and give it to B, without compensation, we must concede to that body the exclusive right to judge when, and in what instance, this conceded right should be exercised.

Construc-
tion of first
section.

It was also insisted, in argument, that the judicial enforcement of the right of property, as asserted in the first section, is inconsistent with the power of compulsory process, to enforce the collection of debts by the seizure and sale of the property of the debtor. But is this true? On the contrary, is not the power to seize and sell the property of the debtor expressly given by the Constitution for the very purpose of protecting and enforcing this right of property? When the Constitution says that you shall not impair the obligation of the contract, it says in direct effect that you shall enforce it; and the only means to do this efficiently is by a seizure and sale. The seizure and sale of the property of the debtor was contemplated by the Constitution, as being a part of the contract itself. The debtor stipulates in the contract, that, in case he fails to pay, the creditor may seize and sell his property by legal process. Such is the legal effect of the contract, because the existing law enters into and forms a part of it.

Provisions
of Constitu-
tion harmo-
nious.

The different provisions of the Constitution will be found when fairly and justly considered, to be harmonious and mutually dependent one upon the other. A general principle may be asserted in one section without any specification of the exceptions in that place. But it must be evident that practical

[*517] *convenience and logical arrangement will not always permit the exceptions to be stated in the same section. It is matter of no importance in what part of the Constitution the exception may be found. Wherever found, it must be taken from the general rule, leaving the remainder of the rule to stand. The

general right of enjoying and defending life and liberty is asserted in the first section of the first article ; while the exceptions are stated in the eighth, ninth, fifteenth, and eighteenth sections of the same article. A party may, by express provisions of the Constitution, forfeit his liberty. The same remark, in reference to exceptions to general principles, will apply to other provisions.

Assertion
of rights.

The right to protect and possess property is not more clearly protected by the Constitution than the right to acquire. The right to acquire must include the right to use the proper means to attain the end. The right itself would be impotent without the power to use its necessary incidents.¹ The Legislature, therefore, cannot prohibit the proper use of the means of acquiring property, except the peace and safety of the State require it. And in reference to this point, I adopt the reasons given by the Chief Justice, and concur in the views expressed by him.

Right
to acquire, as
sacred as right
to protect,
property.

Legislature
cannot abridge
this right.

¹This important principle is not infrequently overlooked when the question of the constitutionality of Sunday laws is under consideration, "All men are created equal." All men have a right to use their time to acquire property. The legislature can no more deprive a person of the free use of a part of his time, than it can deprive him of the use of his time altogether. And because the Sabbatarian has enough independence of thought and enough strength of character to differ from the majority in Sabbath observance, it is manifestly unjust to deprive him for that reason of one seventh of his time, to which he has an inalienable right. The innate sense of every man asserts that he has the same right to his opinion that others have to their opinion ; that he has the same right to work on such days as he wills, that others have to work on such days as they will. The question is one of individual rights, not a question of whether you do or whether you do not agree with the dominant religious party. Any laws interfering with the right to acquire property, like laws interfering with the rights to life and personal liberty, are a flagrant violation of the individual's natural rights.

An impor-
tant principle.

Injustice to
Sabbatarians.

The principle is as follows : An individual's rights cannot be infringed because he belongs to the minority. If I have a right to work six days, and then rest one, all others have the same right ; and if I choose the first day on which to rest, no one has a right to molest me ; and if my friend chooses the seventh day on which to rest, no one has a right to

Principle
stated.

Limitations
on Legislature.

There are certain classes of subjects over which the Legislature possesses a wide discretion ; but still its discretion is confined within certain limits ; and although, from the complex nature of the subject, these limits cannot always be definitely settled in advance, they do and must exist. It was long held, in general terms, that the Legislature had the power to regulate the remedy ; but cases soon arose where the courts were compelled to interpose. In the case of *Bronson v. Kenzie*, 1 Howard, 311, Chief Justice Taney uses this clear language :

Chief Justice
Taney's
decision.

“ It is difficult, perhaps, to draw a line that would be applicable in all cases, between legitimate alterations of the remedy and provisions which in the form of remedy impair the right ; but it is manifest that the obligation of the contract may, in effect, be destroyed by denying a remedy altogether ; or may be seriously impaired by hampering the proceedings with new conditions and restrictions, so as to make the remedy hardly worth pursuing.”

So, the power of the Legislature to pass recording acts and statutes of limitations is conceded, in general terms, and a wide discretion given. Yet, in

Equality
of rights.

molest him. If I work on the day on which he rests without molesting him, no one has a right to stop or hinder me in my work ; and, likewise, no one has a right to stop or hinder him if he works on the day on which I rest. This is justice and equality. But it is neither justice nor equality to deprive my friend of one day (Sunday) for work in every week because he chooses the seventh day on which to rest — thus giving him only five days in which to work for a livelihood.

Objection
advanced.

“ But,” argues the advocate of Sunday laws, “ the minority are not compelled to work on their Sabbath, but simply to refrain from working on our Sabbath.” But if the legislature may compel the minority to “ refrain from working ” one day in the week, why not two ? and if two, why not three ? and if three, why not six ? Thus there is no time to which the minority has a right ; and the legislature (the servant of the people) is empowered to entirely deprive the people of the use of their time, and thus of the very means of sustaining life itself. To this absurd conclusion do the positions of Sunday-law advocates lead us.

Absurdity
involved.

reference to these powers, Mr. Justice Baldwin, in delivering the opinion of the Supreme Court of the United States, in the case of *Jackson v. Lamphine*, 3 Peters, 289, uses this language :

Power of
Legislature.

“Cases may occur where the provisions of a law on these subjects may be so unreasonable as to amount to a denial of the right, and call for the interposition of the court.”

Justice
Baldwin's de-
cision.

The Legislature is vested by the Constitution with a wide discretion in determining what is necessary to the peace and safety of the State ; yet this discretion has some limits. It may be difficult, in many cases, to define these limits with exact precision ; but this difficulty cannot show that there are no limits. Such difficulties must arise under every system of limited government. [*518]

The question arising under this act is quite distinguishable from a case where the Legislature of a State in which slavery is tolerated, passes an act for the protection of the slave against the inhumanity of the master in not allowing sufficient rest. In this State every man is a free agent, competent and able to protect himself, and no one is bound by law to labor for any particular person. Free agents must be left free, as to themselves. Had the act under consideration been confined to infants or persons bound by law to obey others, then the question presented would have been different. But if we cannot trust free agents to regulate their own labor, its times and quantity, it is difficult to trust them to make their own contracts. If the Legislature could prescribe the *days* of rest for them, then it would seem that the same power could prescribe the *hours* to work, rest, and eat.

Question
of rest consid-
ered.

Free agents
should be left
free.

Logical con-
clusion.

For these reasons I concur with the Chief Justice in discharging the prisoner.

December
Term, 1872.

SUPREME COURT OF OHIO.

DECEMBER TERM, 1872.

THE BOARD OF EDUCATION OF THE CITY OF
CINCINNATI v. JOHN D. MINOR ET AL.¹

Claims
made.

[*247]

We are told that this word "religion" must mean "Christian religion," because "Christianity is a part of the *common law of this country," lying behind and above its Constitutions. Those who make this assertion can hardly be serious, and intend the real import of their language. If Christianity is a *law* of the State, like every other law, it must have a *sanction*. Ade-

Eminent
counsel
secured.

¹The opinion in this case was rendered by Mr. Justice Welch. Stanley Matthews, since a Justice of the Supreme Court of the United States, and George Hoadley, subsequently Governor of Ohio, were of the counsel for the Board of Education, and delivered clear and effective speeches at the trial of the case before the Superior Court. The defendants had brought their action in the Superior Court of Cincinnati to enjoin the Board of Education from carrying into effect two resolutions adopted by the board, which read as follows :

Resolutions
adopted by
board.

"*Resolved*, That religious instruction, and the reading of religious books, including the Holy Bible, are prohibited in the common schools of Cincinnati, it being the true object and intent of this rule to allow the children of the parents of all sects and opinions, in matters of faith and worship, to enjoy alike the benefit of the common school fund.

"*Resolved*, That so much of the regulations on the course of study and text-books in the intermediate and district schools (page 213, annual report) as reads as follows : 'The opening exercises in every department shall commence by reading a portion of the Bible, by or under the direction of the teacher, and appropriate singing by the pupils,' be repealed."

Decision
of Superior
Court.

Two of the judges, Hagans and Storer, decided in favor of religion in the public schools, and enjoined the board from carrying the foregoing resolutions into effect. The other member of the court, Judge Taft, dissented. The case was then carried to the Supreme Court of the State, which reversed the decision of the lower court, and wrote a decision which has proved to be of interest throughout the country, and justifies its republication. For decision entire, see 23 Ohio State, 211 *et seq.*

quate penalties must be provided to enforce obedience to all its requirements and precepts. No one seriously contends for any such doctrine in this country, or, I might almost say, in this age of the world. The only foundation — rather, the only excuse — for the proposition that Christianity is part of the law of this country, is the fact that it is a Christian country, and that its Constitutions and laws are made by a Christian people. And is not the very fact that those laws do *not* attempt to *enforce* Christianity, or to place it upon exceptional or vantage ground, itself a strong evidence that they *are* the laws of a Christian people, and that their religion is the best and purest of religions? It is strong evidence that their religion is indeed a religion “without partiality,” and *therefore* a religion “without hypocrisy.” True Christianity asks no aid from the sword of civil authority. It began without the sword, and wherever it has taken the sword, it has perished by the sword. To depend on civil authority for its enforcement is to acknowledge its own weakness, which it can never afford to do. It is able to fight its own battles. Its weapons are moral and spiritual, and not carnal. Armed with these, and these alone, it is not afraid nor “ashamed” to be compared with other religions, and to withstand them single-handed. And the very reason why it is not so afraid or “ashamed” is that it is not the “power of *man*,” but “the power of God,” on which it depends. True Christianity never shields itself behind majorities. Nero, and the other persecuting Roman emperors, were amply supported by majorities; and yet the pure and peaceable religion of Christ in the end triumphed over them all; and it was only when it attempted, itself, to enforce religion by the arm of authority, that it began to wane. A form of religion that cannot live under equal and impartial laws ought to die, and sooner or later must die.

Laws must have penalties.

An absurd doctrine.

Christian principles exemplified in our secular government.

True Christianity asks no state aid.

Dependence on state an acknowledgment of weakness.

True Christianity never takes advantage of being in the majority.

[*248]

Legal
Christianity
a solecism.

State
religion is
invariably
superstition.

Religious
states are
invariably
despotic.

Religion
not recog-
nized in
Constitution.

Necessity
of religion.

Intention
of framers of
Constitution.

How gov-
ernment is
essential to
religion.

**Legal* Christianity is a solecism, a contradiction of terms. When Christianity asks the aid of government beyond mere *impartial protection*, it denies itself. Its laws are divine, and not human. Its essential interests lie beyond the reach and range of human governments. United with government, religion never rises above the merest superstition; united with religion, government never rises above the merest despotism; and all history shows us that the more widely and completely they are separated, the better it is for both.

Religion is not — much less is Christianity or any other particular system of religion — named in the preamble to the Constitution of the United States as one of the declared *objects* of government; nor is it mentioned in the clause in question, in our own Constitution, as being essential to anything *beyond* mere human government. Religion is “essential” to much more than human government. It is essential to man’s spiritual interests, which rise infinitely above, and are to outlive, all human governments. It would have been easy to declare this great truth in the Constitution; but its framers would have been quite out of their proper sphere in making the declaration. They contented themselves with declaring that religion is essential to good government; providing for the protection of all in its enjoyment, each in his own way, and providing means for the diffusion of general knowledge among the people.

The declaration is not that government is essential to good religion, but that religion is essential to good government. Both propositions are true, but they are true in quite different senses. Good government is essential to religion for the purpose declared elsewhere in the same section of the Constitution; namely, for the purpose of mere *protection*. But religion, morality, and knowledge are essential

to government, in the sense that they have the instrumentalities for *producing and perfecting* a good form of government. On the other hand, no government is at all adapted for producing, perfecting, or propagating a good religion. Religion, in its widest and best sense, has most, if not all, *the instrumentalities for producing the best form of government. Religion is the parent, and not the offspring, of good government. Its kingdom is to be *first* sought, and good government is one of those things which will be added thereto. True religion is the sun which gives to government all its true lights, while the latter merely acts upon religion by reflection.

How religion is essential to government.

[*249]

Properly speaking, there is no such thing as "religion of state." What we mean by that phrase is, the religion of some individual, or set of individuals, taught and enforced by the State. The State can have no religious opinions; and if it undertakes to enforce the teaching of such opinions, they must be the opinions of some natural person, or class of persons. If it embarks in this business, whose opinion shall it adopt? If it adopts the opinions of more than one man, or one class of men, to what extent may it group together conflicting opinions? or may it group together the opinions of all? And where this conflict exists, how thorough will the teaching be? Will it be exhaustive and exact, as it is in elementary literature and in the sciences usually taught to children? and, if not, which of the doctrines or truths claimed by each will be blurred over, and which taught in preference to those in conflict? These are difficulties which we do not have to encounter when teaching the ordinary branches of learning. It is only when we come to teach what lies "beyond the scope of sense and reason"—what from its very nature can only be the object of *faith*—that we encounter these difficulties. Especially

No such thing as "state" religion. Some individual's religion.

Whose shall the state adopt?

How far will it go?

Difficulties peculiar to religious teaching.

Difficulty
increased.

is this so when our pupils are children, to whom we are compelled to assume a dogmatical method and manner, and whose faith at last is more a faith in us than in anything else. Suppose the State should undertake to teach Christianity in the broad sense in which counsel apply the term, or the "religion of the Bible," so as also to include the Jewish faith,—where would it begin? how far would it go? and what points of disagreement would be omitted?

Pertinent
questions.

[*250]

Religious
teaching by
state incom-
patible with
Christianity.

If it be true that our law enjoins the teaching of the *Christian religion in the schools, surely, then, all its teachers should be Christians. Were I such a teacher, while I should instruct the pupils that the Christian religion was true and all other religions false, I should tell them that the law itself was an *unchristian* law. One of my first lessons to the pupils would show it to be unchristian. That lesson would be: "Whatsoever ye would that men should do to you, do ye even so to them; for this is the *law* and the prophets." I could not look the veriest infidel or heathen in the face, and say that such a law was just, or that it was a fair specimen of Christian republicanism. I should have to tell him that it was an outgrowth of false Christianity, and not one of the "lights" which Christians are commanded to shed upon an unbelieving world. I should feel bound to acknowledge to him, moreover, that it violates the spirit of our constitutional guaranties, and is a state religion in embryo; that if we have no right to tax him to support "worship," we have no right to tax him to support religious instructions; that to tax a man to put down his own religion is of the very essence of tyranny; that however small the tax, it is a first step in the direction of an "establishment of religion;" and I should add, that the first step in that direction is the fatal step, because it logically involves the last step.

Golden
rule.

Religious
teaching by
state an out-
growth of
false Chris-
tianity.

Injustice
to unbelievers.

First
step logically
involves
last step.

But it will be asked, How can religion, in this general sense, be essential to good government? Is atheism, is the religion of Buddha, of Zoroaster, of Lao-tse, conducive to good government? Does not the best government require the best religion? Certainly the best government requires the best religion. It is the child of true religion, or of truth on the subject of religion, as well as on all other subjects. But the real question here is not, What is the best religion? but, How shall this best religion be secured? I answer, It can best be secured by adopting the doctrine of this seventh section in our own bill of rights, and which I summarize in two words, by calling it the doctrine of "hands off." Let the State not only keep its own hands off, but let it also see to it that religious sects keep their hands off each *other. Let religious doctrines have a fair field, and a free, intellectual, moral, and spiritual conflict. The weakest — that is, the intellectually, morally, and spiritually weakest — will go to the wall, and the best will triumph in the end. This is the golden truth which it has taken the world eighteen centuries to learn, and which has at last solved the terrible enigma of "church and state." Among the many forms of stating this truth, as a principal of government, to my mind it is nowhere more fairly and beautifully set forth than in our own Constitution. Were it in my power, I would not alter a syllable of the form in which it is there put down. It is the true republican doctrine. It is simple and easily understood. It means a free conflict of opinions as to things divine; and it means masterly inactivity on the part of the State, except for the purpose of keeping the conflict free, and preventing the violation of private rights or of the public peace. Meantime, the State will impartially aid all parties in their struggles after religious truth, by providing means for the increase of general

Objections suggested.

Question involved.

[*251]

Freedom for all religions.

A principle slow to be recognized.

Justice of Constitution.

Freedom provided by Constitution.

Religious
rights as
sacred as
rights to life
and property.

“Protection” means
protection
to minority.

Discovery
of truths.

[*252]

Christian
principles.

How to
overcome
error.

Spiritual
warfare.

knowledge, which is the handmaid of good government, as well as of true religion and morality. It means that a man's right to his own religious convictions, and to impart them to his own children, and his and their right to engage, in conformity thereto, in harmless acts of worship toward the Almighty, are as sacred in the eye of the law as his rights of person or property, and that although in the minority, he shall be protected in the full and unrestricted enjoyment thereof. The “protection” guaranteed by the section in question, means protection to the minority. The majority can protect itself. Constitutions are enacted for the very purpose of protecting the weak against the strong; the few against the many.

As with individuals, so with governments, the most valuable truths are often discovered late in life; and when discovered, their simplicity and beauty make us wonder that we had not known them before. Such is the character and history of the truth here spoken of. At first sight it seems to lie deep; but on close examination, we find it to be only *a new phase or application of a doctrine with which true religion everywhere abounds. It is simply the doctrine of conquering an enemy by kindness. Let religious sects adopt it toward each other. If you desire people to fall in love with your religion, make it lovely. If you wish to put down a false religion, put it down by kindness, thus heaping coals of fire on its head. You cannot put it down by force; that has been tried. To make the attempt, is to put down your own religion, or to abandon it. Moral and spiritual conflicts cannot be profitably waged with carnal weapons. When so carried on, the enemy of truth and right is too apt to triumph. Even heathen writers have learned and taught this golden truth. Buddha says: “Let a man overcome

anger by love, evil by good, the greedy by liberality, and the slanderer by a true and upright life." Christianity is full of this truth, and, as a moral code, might be said to rest upon it. It is *in hoc signo*, by the use of *such weapons*, that Christianity must rule, if it rules at all.

Truths of
Buddha.

We are all subject to prejudices, deeper and more fixed on the subject of religion than on any other. Each is, of course, unaware of his own prejudices. A change of circumstances often opens our eyes. No Protestant in Spain, and no Catholic in this country, will be found insisting that the government of his residence shall support and teach its own religion to the exclusion of all others, and tax all alike for its support. If it is right for one government to do so, then it is right for all. Were Christians in the minority here, I apprehend no such a policy would be thought of by them. This is the existing policy of most governments in the world. Christian countries, however, are fast departing from it—witness Italy, Prussia, Spain, England. The true doctrine on the subject is the doctrine of peaceful disagreement, of charitable forbearance, and perfect impartiality. Three men—say, a Christian, an infidel, and a Jew—ought to be able to carry on a government for their common benefit, and yet leave the religious doctrines and worship of each unaffected thereby, otherwise than by fairly and impartially protecting each, and aiding each in his *searches after truth. If they are sensible and fair men, they will so carry on their government, and carry it on successfully, and for the benefit of all. If they are not sensible and fair men, they will be apt to quarrel about religion, and, in the end, have a bad government and bad religion, if they do not destroy both. Surely they could well and safely carry on any other business, as that of banking, without involving their religious

Prejudices
of humanity.

Tendency
of civilization.

Right
principle.

[*253]

Nature of
government.

opinions, or any acts of religious worship. Government is an organization for particular purposes. It is not almighty, and we are not to look to it for everything. The great bulk of human affairs and human interests is left by any free government to individual enterprise and individual action. Religion is eminently one of these interests, lying outside the true and legitimate province of government.

Erroneous
claims.

Counsel say that to withdraw all religious instruction from the schools would be to put them under the control of "infidel sects." This is by no means so. To teach the doctrines of infidelity, and thereby teach that Christianity is false, is one thing; and to give no instructions on the subject is quite another thing. The only fair and impartial method, where serious objection is made, is to let each sect give its own instructions, elsewhere than in the State schools, where of necessity all are to meet; and to put disputed doctrines of religion among other subjects of instruction, for there are many others, which can more conveniently, satisfactorily, and safely be taught elsewhere. Our charitable, punitive, and disciplinary institutions stand on an entirely different footing. There the State takes the place of the parent, and may well act the part of a parent or guardian in directing what religious instructions shall be given.

These
principles
not new.

The principles here expressed are not new. They are the same, so far as applicable, enunciated by this court in *Bloom v. Richards*, 2 Ohio State, 387, and in *McGatrick v. Wason*, 4 Ohio State, 566. They are as old as Madison, and were his favorite opinions. Madison, who had more to do with framing the Constitution of the United States than any other man, and *whose purity of life and orthodoxy of religious belief no one questions, himself says :

[*254]

Statements
of Madison.

"Religion is not within the purview of human government." And again he says: "Religion is

essentially distinct from human government, and exempt from its cognizance. A connection between them is injurious to both. There are causes in the human breast which insure the perpetuity of religion without the aid of law.”¹

Religion exempt from cognizance of government.

Support of religion.

In his letter to Governor Livingston, July 10, 1822, he says: “I observe with particular pleasure the view you have taken of the immunity of religion from civil government, in every case where it does not trespass on private rights or the public peace. This has always been a favorite doctrine with me.”²

A favorite doctrine with Madison.

I have made this opinion exceptionally and laboriously long. I have done so in the hope that I might thereby aid in bringing about a harmony of views and a fraternity of feeling between different classes of society, who have a common interest in a great public institution of the State, which, if managed as sensible men ought to manage it, I have no doubt, will be a principal instrumentality in working out for us what all desire — the best form of government and the purest system of religion.

Good government and good religion.

I ought to observe that, in our construction of the first named of the two resolutions in question, especially in the light of the answer of the Board, we do not understand that any of the “readers,” so called, or other books used as mere lesson-books, are excluded from the schools, or that any inconvenience from the necessity of procuring new books will be occasioned by the enforcement of the resolutions.

It follows that the judgment of the Superior Court will be reversed, and the original petition dismissed.

Judgment of the court.

Judgment accordingly.

¹ *Ante* page 78.

² *Ante* page 75. In the same letter he declared: “We are teaching the world . . . that religion flourishes in greater purity without, than with, the aid of government.”

America's lesson.

September,
1875.

ADDRESS OF PRESIDENT GRANT.¹

TO THE ARMY OF THE TENNESSEE.

General
Grant's ad-
dress.

Price of
our Union.

Equality
for all.

COMRADES: It always affords me much gratification to meet my old comrades in arms ten to fourteen years ago, and to live over again in memory the trials and hardships of those days,—hardships imposed for the preservation and perpetuation of our free institutions. We believed then and believe now that we had a government worth fighting for, and, if need be, dying for. How many of our comrades of those days paid the latter price for our preserved Union! Let their heroism and sacrifices be ever green in our memory. Let not the results of their sacrifices be destroyed. The Union and the free institutions for which they fell should be held more dear for their sacrifices. We will not deny to any who fought against us any privileges under the government which we claim for ourselves. On the contrary, we welcome all such who come forward in good faith to help build up the waste places and to perpetuate our institutions against all enemies, as

Interest
created re-
markable.

¹This address was delivered at Des Moines, Iowa, at the reunion of the Army of the Tennessee in 1875. The interest taken in the speech by the American people was remarkable. The "Iowa State Register," in its Grant memorial edition of July 23, 1885, reprints the address with the following introduction:

Attention
attracted.

"The people of Des Moines will always remember with great pride and satisfaction the visit of General Grant to this city in September, 1875. The Army of the Tennessee held its annual reunion here at that time, and the occasion called together a brilliant array of men distinguished in civil and military life. . . . The event of the reunion was his famous speech on the school question, delivered in Moore's old opera house on the second day of the meeting. This speech has attracted more attention than perhaps any other of General Grant's public utterances. On account of the wide-spread interest that it then and since has excited, we give it below in full as it was printed at the time in the 'Register.'"

brothers in full interest with us in a common heritage. But we are not prepared to apologize for the part we took in the war. It is to be hoped that like trials will never again befall our country. In this sentiment no class of people can more heartily join than the soldier who submitted to the dangers, trials, and hardships of the camp and the battle-field, on whichever side he fought. No class of people are more interested in guarding against a recurrence of those days. Let us, then, begin by guarding against every enemy threatening the perpetuity of free republican institutions.

Our common heritage.

I do not bring into this assemblage politics,—certainly not partisan politics,—but it is a fair subject for soldiers in their deliberations to consider what may be necessary to secure the prize for which they battle. In a republic like ours, where the citizen is the sovereign and the official the servant, where no power is exercised except by the will of the people, it is important that the sovereign—the people—should possess intelligence. The free school is the promoter of that intelligence which is to preserve us a free nation. If we are to have another contest in the near future of our national existence, I predict that the dividing line will not be Mason and Dixon's, but between patriotism and intelligence on the one side, and superstition, ambition, and ignorance on the other. Now, in this centennial year of our national existence, I believe it is a good time to begin the work of strengthening the foundation of the house commenced by our patriotic forefathers one hundred years ago at Concord and Lexington. Let us all labor to add all needful guarantees for the more perfect security of free thought, free speech, and free press; pure morals, unfettered religious sentiments, and of *equal rights and privileges to all men, irrespective of nationality, color, or religion.* Encour-

The people are sovereign—officials are servants.

Importance of our free schools.

Our free institutions should be strengthened.

More perfect security should be guaranteed.

Absolute equality of rights

Public funds
not to be ap-
propriated to
sectarian uses.

No religious
teaching in
public schools.

It should be
left to private
institutions.

age free schools, and resolve that not one dollar of money appropriated to their support, no matter how raised, shall be appropriated to the support of any sectarian school. Resolve that neither the State or nation, nor both combined,¹ shall support institutions of learning other than those sufficient to afford to every child growing up in the land the opportunity of a good common school education, *unmixed with sectarian, pagan, or atheistical tenets. Leave the matter of religion to the family altar, the church, and the private school, supported entirely by private contribution. Keep the church and state forever separate.* With these safeguards I believe the battles which created the Army of the Tennessee will not have been fought in vain.²

¹There is some controversy as to the exact words used by the President in this sentence. "It is claimed that by a typographical error General Grant is made to express himself as opposed to public aid to higher education. So it is said that in the sentence beginning, 'Resolve that neither the State or nation, nor both combined,' etc., the 'n's' should come off from the disjunctives." It would then read, "Resolve that either the State or nation, or both combined," etc. "Iowa State Register," July 23, 1885.

Interest
in religious
liberty.

²The interest in religious liberty and the opposition to sectarian use of public moneys was greatly augmented by this speech. So in his message to Congress, December 7, 1875, President Grant said :

Equality of
all before the
law.

"We are a republic whereof one man is as good as another before the law. Under such a form of government, it is of the greatest importance that all should be possessed of education and intelligence enough to cast a vote with the right understanding of its meaning. . . . As a primary step, therefore, to our advancement in all that has marked our progress in the past century, I suggest for your earnest consideration, and most earnestly recommend, that a constitutional amendment be submitted to the Legislatures of the several States for ratification, making it the duty of each of the several States to establish and forever maintain free public schools adequate to the education of all the children in the rudimentary branches, irrespective of sex, color, birth-place, or religion; forbidding the teaching in said schools of religious, atheistic, or pagan tenets, and prohibiting the granting of any school funds, or school taxes, or part thereof, either by legislative, municipal, or any other authority, for the benefit or in aid, directly or

Educational
amendment
recommended.

Religious
teaching
should be
prohibited.

indirectly, of any religious sect or denomination, or in aid or for the benefit of any other object, of any nature or kind whatsoever."

Accordingly, one week later, Hon. James G. Blaine proposed in the House of Representatives the amendment found on page 49 of this work. It was not acted upon, however, during that Congress. The following year, on June 15, the Republican national convention declared :

Blaine
amendment.

"The public school system of the several States is the bulwark of the American republic, and with a view to its security and permanence, we recommend an amendment to the Constitution of the United States, forbidding the application of any public funds or property for the benefit of any schools or institutions under sectarian control."

Republican
resolution.

The Democratic national convention, a few days subsequently, June 28, 1876, also asserted its position in the following words :

"We do here re-affirm . . . our faith in the total separation of church and state for the sake alike of civil and religious freedom."

Democratic
resolution.

The convention also asserted that the Democratic party has cherished our free public schools "from their foundation, and is resolved to maintain [them] without prejudice or preference for any class, sect, or creed, and without largesses from the treasury to any."

Position
of Democratic
party.

In contrast with the above liberal expressions of both of the great political parties, an attempt is being made to foist another policy upon the American people. During the first session of the fiftieth Congress, May 25, 1888, a joint resolution proposing an amendment to the national Constitution was offered by Senator Blair, which is to compel the teaching of "the principles of the Christian religion" in every public school in the land. Section two of the proposed amendment reads as follows :

A contrary
policy.

"SECTION 2. Each State in this Union shall establish and maintain a system of free public schools, adequate for the education of all the children living therein, between the ages of six and sixteen years inclusive, in the common branches of knowledge, and in virtue, morality, and the principles of the Christian religion. But no money raised by taxation imposed by law, or any money or other property or credit belonging to any municipal organization, or to any State, or to the United States, shall ever be appropriated, applied, or given to the use or purpose of any school, institution, corporation, or person, whereby instruction or training shall be given in the doctrines, tenets, belief, ceremonials, or observances peculiar to any sect, denomination, organization, or society, being or claiming to be, religious in its character, or such peculiar doctrines, tenets, belief, ceremonials, or observances be taught or inculcated in the free public schools."

Blair
amendment.

State to teach
religion in
public schools.

In the succeeding Congress the amendment was again introduced, but on account of the opposition aroused, the objectionable provision was recast so as to read, "In knowledge of the fundamental and non-sectarian principles of Christianity ;"—as though a more obscure wording would make the anti-American amendment any the less objectionable. The public schools, like all state institutions, should be purely secular.

Re-introduc-
tion of Blair
amendment.

Spirit
of religious
amendment
and proposed
Sunday laws.

The spirit which actuates this amendment and the proposed Sunday laws is manifested in a contribution of Senator Blair to the New York "Mail and Express" of April 19, 1890. Its positions are so diametrically opposed to the whole policy of our national government and to the equality of all before the law, that it is a matter of surprise that such an illiberal, un-American, and un-Christian policy should be advocated in this enlightened age. The article is as follows :

"BLAIR'S LETTER.

"THERE CAN BE BUT ONE RELIGION AND ONE EDUCATIONAL SYSTEM.

"FALSE TEACHINGS MUST BE ERADICATED.

"The American Nation Awakening to the Necessity of Assimilating Its Heterogeneous Elements of Population—Religion the Great Humanizing Influence—No Doctrine which Interposes a Human Potentate between the Creator and His Creatures will be Tolerated in America.

"(SPECIAL CORRESPONDENCE OF 'MAIL AND EXPRESS.')

"FROM UNITED STATES SENATOR HENRY WILLIAM BLAIR.

.

"BUT ONE FAITH CAN PREVAIL.

Un-American
principles.

"Only a homogeneous people can be great. No nation can exist with more than one language, more than one religion, more than one general form of education for the masses of the people. There may be change, modification, improvement in all these, but community of language, religion, and of educational forces are indispensable to the development of nationality, and there is no hope of prolonged existence of great communities where there is not either already complete unification in all these respects, or a strong and increasing tendency to the same. The American people instinctively feel and know these things to be so. Hence it is that everywhere we now find the public mind arousing itself, and grappling with the adverse and hostile elements which are almost everywhere to be found in our physical, mental, and spiritual life.

But one
religion to
be tolerated.

"I do not believe that it is possible that the American nation will develop in the direction of toleration of all religions—that is, so-called religions. Whether the general public conviction shall be right or wrong, I yet believe that instead of selecting and finally tolerating all so-called religions, the American people will, by constant and irresistible pressure, gradually expel from our geographical boundaries every religion except the Christian in its varied forms. I do not expect to see the pagan and other forms existing side by side with the former, both peaceably acquiesced in for any considerable length of time. I do not think that experience will satisfy the American people that the inculcation of any positive religious belief hostile to the Christian faith or the

practice of the forms of any other worship, is conducive to the good order of society and the general welfare. There may not be an exhibition of bigotry in this. I believe that religious toleration will yet come to be considered to be an intelligent discrimination between the true and the false, and the selection of the former by such universal consent as shall exclude by general reprobation the recognition and practice of the latter.

Jesuitic
toleration
demanded.

“ROMANISM’S BALEFUL INFLUENCE.

“No religion which interposes any agency between man and God is Christianity. No other religion than Christianity—and Christianity as I have thus defined it—is consistent with the existence of human liberty and republican institutions. This country will not long exist as a free country if any other religious teaching comes generally to prevail. No one human being is the superior of any other human being in kind, however much we may differ in the extent of our several endowments, and no religion which finds space for an authority between the creature and the Creator can prevail without destroying the republic. Now, religious belief is a matter of education, and hence no free people will, or at least can, safely permit a system or a practice of education which sets up any human master of the human soul—save only the supremacy of each soul over itself.

“This does not imply that the people will undertake to teach affirmatively the dogmas of religion in the sectarian sense, or perhaps, even, in the most general and fundamental sense. But it does imply that the people of the republic will see to it that certain things are not taught to the American child. The people will not rest until they have subverted all schools and teachers who create in the soul of the child a belief in a power greater than the right of private judgment and less than the authority of God—an allegiance to any spiritual power except the highest, or any prince, potentate, or power, save only the eternal King, which can inflict pains and penalties of a spiritual nature, or in any other life than this on earth.

Interference
with private
rights upheld.

“FALSE RELIGIONS MUST GO.

“The people will not rest in their study of the subject, nor in the regulation of the educational forces of the land, until they have compelled all citizens to be the masters of the English tongue—until they have secured the eradication of all religious teaching which enslaves the soul of the child to any other master than its Supreme Father, or which clothes a mere man with powers which partake of the prerogatives of God.

Intolerance
of Sunday-
rest advocates.

“The people are studying these subjects anew. They are questioning whether there be not some mistake in theories of religious liberty which permit the inculcation of the most destructive errors in the name of toleration, and the spread of pestilence under the name of that liberty which dispises the quarantine.”

February,
1887.

SPEECH OF SENATOR CROCKETT.¹

IN THE SENATE OF THE STATE OF ARKANSAS.

Repeal
of exemption
clause.

Sir, I take shame to myself as a member of the General Assembly of 1885, which repealed the act of religious protection which this bill is intended to restore. It was hasty and ill-advised legislation, and, like all such, has been only productive of oppressive persecution upon many of our best citizens, and of shame to the fair fame of our young and glorious State. Wrong in conception, it has proved infamous in execution, and under it such ill-deeds and foul oppressions have been perpetrated upon an inoffensive class of free American citizens in Arkansas, for conscience' sake, as should mantle the cheek of every lover of his State and country with indignant shame.

Infamous
wrongs com-
mitted.

Guarantees
of Constitu-
tion.

For nearly half a century, the laws of our State, constitutional and statutory, were in accord with our national Constitution, in guaranteeing to every citizen the right to worship God in the manner prescribed by his own conscience, and that alone. The noble patriots who framed our nation's fundamental law, with the wisdom taught by the history of disastrous results in other nations from joining church and state, and fully alive to so great a danger to our republican institutions and their perpetuity, so wisely constructed that safeguard of our American liberties, that for forty years after its ratification there was no effort to interfere with its grand principle of equal protection to all, in the full enjoyment and exercise of their religious convictions. Then petitions began to pour

* Equal pro-
tection to all.

¹ A speech by Senator Robert H. Crockett, grandson of Hon. David Crockett, in behalf of a bill introduced into the Legislature, granting immunity to Sabbatarians from the penalties inflicted for working upon Sunday. See "Weekly Arkansas Gazette," February 10, 1887.

in from the New England States upon the United States Senate "to prevent the carrying and delivery of the mails upon Sunday" — which they declared was set aside by "divine authority as a day to be kept holy."

Attempt
to modify
American
institutions.

The petitions were referred to the committee on postal matters, and the report was made by Hon. Richard M. Johnson, one of the fathers of the Democratic party. I quote the following from that report,¹ which was adopted unanimously, and "committee discharged :

Petitions
referred.

"Among all the religious persecutions with which almost every page of modern history is stained, no victim ever suffered but for violation of what government denominated the law of God. To prevent a similar train of evils in this country, the Constitution has withheld the power of defining the divine law. It is a right reserved to each citizen. And while he respects the rights of others, he cannot be held amenable to any human tribunal for his conclusions. . . . The obligation of the government is the same on both these classes [Sabbatarians and Sunday-keepers]; and the committee can discover no principle on which the claims of one should be more respected than those of the other, unless it be admitted that the consciences of the minority are less sacred than those of the majority."

Religious
persecutions
of the past.

Interference
in religion, un-
constitutional.

All equal
before the law.

Listen to that last sentence — but again I quote :

"What other nations call religious toleration, we call religious rights. They are not exercised in virtue of governmental indulgence, but as rights, of which government cannot deprive any of its citizens, however small. Despotism may invade these rights, but justice still confirms them."

American
principle is
rights — not
merely toler-
ation.

Rights
inalienable.

And again :

¹ For this report in full, see *ante* page 89, *et seq.*

A single religious decision unconstitutional.

Force in religious matters un-American.

Resources of Arkansas.

Immigration.

“Let the national Legislature once perform an act which involves the decision of a religious controversy, and it will have passed its legitimate bounds. The precedent will then be established, and the foundation laid, for the usurpation of the divine prerogative in this country, which has been the desolating scourge to the fairest portions of the Old World. Our Constitution recognizes no other power than that of persuasion, for enforcing religious observances.”

Sir, it was my privilege during the last two years to travel through our north-western States in the interest of immigration. I delivered public lectures upon the material resources of Arkansas, and the inducements held out by her to those who desired homes in a new State. I told them of her cloudless skies and tropical climes, and bird songs as sweet as vesper chimes. I told them of her mountains and valleys, of her forests of valuable timber, her thousands of miles of navigable waters, her gushing springs, her broad, flower-decked and grass-carpeted prairies, sleeping in the golden sunshine of unsettled solitude. I told them, sir, of the rich stores of mineral wealth sleeping in the sunless depths of her bosom. I told them of our God-inspired liquor laws, of our “pistol laws,” of our exemption laws, and oh, sir! — God forgive me the lie — I told them that our Constitution and laws protected all men equally in the enjoyment and exercise of their religious convictions. I told them that the sectional feeling engendered by the war was a thing of the past, and that her citizens, through me, cordially invited them to come and share this glorious land with us, and aid us to develop it.

Many came and settled up our wild lands and prairies, and where but a few years ago were heard in the stillness of the night the howl of the wolf, the scream of the panther, and the wail of the wildcat, these people for whom I am pleading, came and

settled ;—and behold the change ! Instead of the savage sounds incident to the wilderness, now are heard the tap, tap, tap, of the mechanic's hammer, the rattle and roar of the railroad, the busy hum of industry, and softer, sweeter far than all these, is heard the music of the church bells as they ring in silvery chimes across the prairies and valleys, and are echoed back from the hill-sides throughout the borders of our whole State.

Prosperity
of State.

These people are, many of them, Seventh-day Adventists and Seventh-day Baptists. They are people who religiously and conscientiously keep Saturday, the seventh day, as the Sabbath, in accordance with the fourth commandment. They find no authority in the Scripture for keeping Sunday, the first day of the week, nor can any one else. All commentators agree that Saturday is and was the scriptural Sabbath, and that the keeping of Sunday, the first day of the week, as the Sabbath, is of human origin, and not by divine injunction. The Catholic writers and all theologians agree in this.

Many
immigrants
Sabbatarians.

These people understand the decalogue to be fully as binding upon them to-day as when handed down amid the thunders of Sinai. They do not feel at liberty to abstain from their usual avocations, because they read the commandment, "Six days shalt thou labor," as mandatory, and they believe that they have no more right to abstain from labor on the first day of the week than they have to neglect the observance of Saturday as their Sabbath. They agree with their Christian brethren of other denominations in all essential points of doctrine, the one great difference being upon the day to be kept as the Sabbath. They follow no avocations tending to demoralize the community in which they live. They came among us expecting the same protection in the exercise of their religious faith as is accorded to them

Moral law
still considered
binding.

Character-
istic of Sab-
batarians.

Persecution
in Arkansas.

in all the States of Europe, in South Africa, Australia, the Sandwich Islands, and every State in the Union except, alas! that I should say it, Arkansas! Sir, under the existing law, there have been in Arkansas, within the last two years, three times as many cases of persecution for conscience' sake¹ as there have been in all the other States combined since the adoption of our national Constitution.

Operations
of Sunday
laws.

Let me, sir, illustrate the operation of the present law by one or two examples. A Mr. Swearingen came from a Northern State and settled a farm in Benton county. His farm was four miles from town, and far away from any house of religious worship. He was a member of the Seventh-day Adventist Church, and after having sacredly observed the Sabbath of his people (Saturday) by abstaining from all secular work, he and his son, a lad of seventeen, on the first day of the week went quietly about their usual avocations. They disturbed no one—interfered with the rights of no one. But they were

¹For a summary of more than twenty of these cases, see A. T. Jones's pamphlet, "Civil Government and Religion," page 114 *et seq.*, published by the "American Sentinel," 43 Bond street, New York City.

Prosecutions
in various
States.

But the Senator overlooked the fact that similar outrages had been perpetrated in Tennessee and elsewhere. The truth is, that religious persecution goes hand in hand with religious legislation. During the past few years, since the Sunday-law agitation has been revived, Sabbatarians have been prosecuted in several of the States, among them Tennessee, Arkansas, Georgia, Massachusetts, and Pennsylvania.

Tennessee
Adventists
in jail.

In the Nashville "Daily American" of October 19, 1886, we read: "The readers of the 'American' are aware that three of the members of the Seventh-day Adventists are lying in jail at Paris [Tennessee] for carrying out the principles of their faith concerning the Sabbath of the decalogue." Two of these Christians contracted a fever from the filthy, sickening cells, and on account of this they were released under promise of returning when they recovered. One of them, in order to have paid his fine and costs in jail, at the rate fixed by law, would have been confined two hundred eighty days, or over three fourths of a year; and all this simply because he acted contrary to the religious belief of some one else! In a Georgia jail a Sabbatarian contracted a fever from which he died.

observed, and reported to the grand jury — indicted, arrested, tried, convicted, fined; and having no money to pay the fine, these moral Christian citizens of Arkansas were dragged to the county jail and imprisoned like felons for twenty-five days — and for what? For daring in this so-called land of liberty, in the year of our Lord 1887, to worship God!

Adventists
fined and
sent to jail.

Christians
imprisoned
like felons.

Was this the end of the story? Alas, no, sir! They were turned out; and the old man's only horse, his sole reliance to make bread for his children, was levied on to pay the fine and costs, amounting to thirty-eight dollars. The horse sold at auction for twenty-seven dollars. A few days afterward the sheriff came again, and demanded thirty-six dollars, — eleven dollars balance due on fine and costs, and twenty-five dollars for board for himself and son while in jail. And when the poor old man — a Christian, mind you — told him with tears that he had no money, he promptly levied on his only cow, but was persuaded to accept bond, and the amount was paid by contributions from his friends of the same faith. Sir, my heart swells to bursting with indignation as I repeat to you the infamous story.

Old man's
horse sold.

His only
cow levied on.

Helped
by friends.

On next Monday, at Malvern, six as honest, good, and virtuous citizens as live in Arkansas are to be tried as criminals for daring to worship God in accordance with the dictates of their own consciences, for exercising a right which this government, under the Constitution, has no power to abridge. Sir, I plead, in the name of justice, in the name of our republican institutions, in the name of these inoffensive, God-fearing, God-serving people, our fellow-citizens, and last, sir, in the name of Arkansas, I plead that this bill may pass, and this one foul blot be wiped from the escutcheon of our glorious commonwealth.

Continuation
of prosecution.

Plea for
Sabbatarians.

Feb. 18, 1890.

SUNDAY LEGISLATION.

SUBMITTED TO THE HOUSE COMMITTEE ON THE DISTRICT OF COLUMBIA,
FEBRUARY 18, 1890.¹

*To the Honorable, the Committee on the District of
Columbia:*

GENTLEMEN: In submitting to you this brief, as a statement of some of the considerations why you are asked to report unfavorably upon House bill 3854, entitled, "A bill to prevent persons from being forced to labor on Sunday," your attention is called to these propositions:

Unfavorable
report on
Sunday bill
requested.

Reasons.

1. The legislation asked is unconstitutional, and contrary to the spirit of American institutions.

2. Waiving the question of unconstitutionality, Sunday laws already exist, in force and enforceable, in the District of Columbia, and the measure is one of cumulative legislation.

Bill is un-
constitutional.

Article first of the amendments to the Constitution declares that "Congress shall make no law respecting an establishment of religion."

House bill 3854 embodies a measure which Congress is asked to adopt, as a law governing the District of Columbia over which Congress has sole jurisdiction. Therefore, if this measure has in view the establishment of the observance of a religious dogma, or the enforcement of religious reverence for a particular day, because of the supposed divine origin of the observance required, or because a larger or smaller proportion of citizens observe the day religiously, it is a religious measure, outside the pale of civil legislation, and Congress is incompetent to entertain it.

Religious
legislation
foreign to
sphere of
Congress.

¹ A brief upon the proposed Sunday law for the District of Columbia, submitted by Attorney W. H. Mc Kee of Washington.

Three points of internal evidence prove the bill to be religious in its inception and in its intent :

Evidence of nature of bill.

First, The word "secular," in the phrase "to perform any secular labor or business," betrays the reverential spirit in which the bill is framed. The incongruity of the word, in such a connection, in a purely civil statute, will be perfectly patent if applied to a supposed measure, "To prevent persons from being forced to labor on the Fourth of July," or, "To prevent persons from being forced to labor on the twenty-second of February." The various antonyms — regular, religious, monastic, spiritual, clerical — of the word "secular," show the character which this term gives to the bill, and unavoidably. No stronger circumstantial evidence could possibly be required than the unconscious testimony of this expression.

Religious features of Sunday bill.

Strong evidence.

Second, The words "except works of necessity or mercy" are subject, in a lesser degree, to the same construction. The character of phrases as well as of human beings, may be determined by the company they keep, and this phrase is one which carries the mind immediately to the consideration of religious and Biblical exceptions made to the strict application of the divine law for the Sabbath. That is the source of the expression, and its course may be followed through all the religious laws for "Sabbath observance," and the judicial interpretation of them, which have been had. The effect of this phrase, in connection with the preceding word "secular," is conclusive.

Its exceptions prove its nature.

Evidence conclusive.

Third, The exemption clause contains the language, "who conscientiously believe in and observe any other day." What has a purely civil statute to do with the conscience of man, as regards his conscientious belief in, and observance of, a day of rest? The moment the domain of conscience is touched, as such, from that instant the measure is no longer civil. And if, as this exemption shows, there be a class

Further evidence.

Logic of
exemptions.

to whose conscience this bill would work a hardship, and to whose religious convictions it would stand opposed, then, *per contra*, there is another class the consciences of whom the measure is intended to favor. It is, therefore, not only legislation on matters of conscience, but class legislation as well.

Presupposi-
tion of an
exemption
clause.

More than this: What does an exemption clause presuppose? Is it not a civil or legal incapacity to meet the requirements of the law? If the incapacity arise within the domain of conscience, it is without the civil sphere, and the necessary conclusion is that the legislation is outside the jurisdiction of human law.

Bill not in
purview of
congressional
legislation.

These three points might be elaborated further, but this statement of them is sufficient to show that the bill bears within itself conclusive evidence of its religious character; and if religious, it is not within the purview of congressional legislation, as contemplated by the Constitution.

Heredity of
Sunday bill.

Blair Sun-
day bill its
progenitor.

In measures, as in men, there is an ancestral spirit by which we may know them. What is the heredity of this bill? Its progenitor in the Senate is the Blair Sunday-rest bill, which, on its first introduction in the Senate of the fiftieth Congress, was plainly entitled, "A bill to secure to the people the enjoyment of the first day of the week, commonly known as *the Lord's day*, as a day of rest, and to *promote its observance as a day of religious worship*;" and in the fifty-first Congress it is called, "A bill to secure to the people *the privileges* of rest and of *religious worship*, free from disturbance by others, on the first day of the week." The body of the two bills is the same, except that the incongruous nomenclature in the first has been harmonized in the second, and "first day," "Lord's day," and "Sabbath," made to read, "first day" and "Sunday." Although in the last section of the former bill the expression "religious observance of the Sabbath day" is omitted, in the second, a neu-

Object of
Blair bill.

New title
of Blair bill.

trality clause, for it is nothing else, is inserted, which declares that "this act shall not be construed to prohibit or sanction labor on Sunday, by individuals who *conscientiously* believe in and keep any other day as *the Sabbath*," etc. It is the same bill resurrected, and attempts the mingling of incongruous elements which cannot be assimilated,—the Sabbath which is divine, and the Sunday which is human; Sabbath of the moral law, Sunday of the civil law; Sabbath of the Lord thy God, Sunday a religious day by the enactment of Constantine, and a *dies non* in the statutory nomenclature of the civil law.

Neutrality
clause.

Incongruity
of Sunday
bill.

The very next branch of this family tree is entitled, "An act to punish blasphemers, swearers, drunkards, and Sabbath-breakers," which is openly a religious law. See "Laws of the District of Columbia, 1868," pages 136, 137, 138. The family likeness of these three measures, the old Maryland law adopted into the statutes of the District, the Blair Sunday-rest bill, and the Breckinridge local Sunday bill, is unmistakable, and if the original from which the latter two are derived is a religious law, the two descendants certainly must be.

Another
religious bill.

But in the bill before this committee there has been an attempt to separate the civil from the religious, and the claim is made that this measure is consistently for a "civil Sunday." In making good this claim, what is it necessary to show? It is necessary to show that the legislative and public mind has been entirely divested of the popular idea that Sunday is a day to which a due religious observance is to be paid. Both those who make the law, and those who are subject to it, must be shown to have placed themselves exactly in the mental position of the civilian whose mind has never harbored the thought of the sacredness of one day above another. Then no other legislative restrictions would be at-

Claims
made.

How its
religious
character is
manifested.

tempted to be placed upon Sunday than could be enacted for Monday, or Tuesday, or any succeeding day of the week. But read this bill, 3854, and insert for the word "Sunday" the name of a different day of the week, and consider how quickly the sense of the people would reject it. Its propriety as a civil measure would be instantly denied. What should give it a different complexion when it contains the word "Sunday"? What is the magic "presto change" in that name? It is the religious association; the fact that the consciences of many men for many generations have been trained to reverence Sunday as the holy day of God.

Origin
of Sunday
observance.

Sunday was first a holiday, dedicated as such to the sun and its worship. So that in its inception it was a day the observance of which was based upon a religious idea; in the accommodation of the forms and observances of the pagan and Christian churches, which, for the sake of temporal power and success, was brought about in the reign of Constantine, the church found it politic, from the point of view which then prevailed, to adopt the pagan holiday, and did so, consecrating it anew, with all the sacredness of the religious forms and beliefs of the church, transferring to it the awful sanctity involved in the commandment of God, "Remember the Sabbath day to keep it holy," and adding to that all the holy sentiment which can be invoked for a day commemorative of the resurrection of our Saviour.

Its adop-
tion by Chris-
tianity.

Character
of Sunday.

Thus cumulatively religious is the history of this day. The religious idea has never been separated from it. No enforcement of its observance, distinctively from other days, can be divorced from that inbred religious idea, any more than the physical and moral characteristics of the father and mother can be eliminated from the child. This child of the church and a religious holiday ("the venerable day of the

sun") is, by birth, by inheritance, and by unbroken habit throughout its existence, a religious day—nothing else.

Sunday a religious day.

Congressmen are here to crystallize into law the highest expression of the will of the people. The expression of the civilian will, must result in civil law. You are here to make civil law then, are you not, not moral law? Why can you not make moral law for the people? Because you cannot exceed the powers which the people had to give you, who constituted you legislators. And as they had no power to make a rule of moral action one for the other, or for themselves, therefore they had no authority to delegate such power to you.

Sphere of the legislator.

If, then, you cannot, in your own minds, and in the minds of the people, both in theory and in fact, divorce completely—as utterly as though it had never existed—the religious idea from the concept Sunday, you have no right to legislate upon the use of that day as distinguished from any other day.

The religious idea inseparable from the day.

Those who are asking for the passage of this bill, are urging the members to commit themselves to an unconstitutional act.

Sunday laws, and the whole line of religious legislation which goes in the same category, are alien to the letter of American fundamental law and to the spirit of American institutions. They are a survival of the English church establishment, and should not have existed after the Declaration of Independence and the adoption of the Constitution any more than the laws governing the control of livings, and the maintenance of the Church of England. They have rightly no more place in our statutes than have laws for the regulation of the royal succession.

Sunday laws un-American.

Survival of the English church.

But the legal and judicial indolence of bar and bench has permitted this alien brood an entrance into our statute-books through *precedent* and not

Supported by precedent, not by principle.

principle. And the precedent can be relied upon, in every case, to prove its principle wrong.

A clause of article fourteen of the amendments to the Constitution says that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;" but, when "legislating for the District of Columbia, Congress is bound by the prohibitions of the Constitution;" and, as otherwise expressed, it is the purpose of this government to defend the personal rights and privileges of all its citizens, that, as the preamble states, the blessings of liberty may be secured to ourselves and to our posterity. Yet suppose for a moment that you are able to divest yourselves of the religious hereditary acquired since your ancestors first heard Sunday preached, and you proceed upon a civil basis entirely. How far may you, as legislators, proceed in this special legislation without trenching upon individual and absolute rights? To determine that, let us go back again to the source from which legislative authority is derived, — the people.

A citizen holds the right and title to his life in fee-simple. Of what is a man's life composed? Threescore years and ten, no more, if by reason of strength he may attain to it. In other words, it is *time* — that is the stuff of which the web of his life is woven. That time is his, possessed by him in indefeasible right. May he take, civilly, one seventh of his neighbor's time, ten years of his life? May his neighbor take one seventh of his life, ten years of his time, and devote it to any purpose whatever? If not, then have they the right to delegate to you the power to take away one seventh of the life-time of all the people? For, if it be true that they have that right, and may therefore give it to you, then the representative of the Knights of Labor who spoke at the late Sunday convention at Washington, was

Purpose
of the gov-
ernment.

Absolute
rights of
citizen.

Right
to time in-
alienable.

His neigh-
bor cannot
take it.

Nor can
such power
be delegated.

on the right track when he said, "We go farther than you, and demand two days in the week, Saturday for play and Sunday for rest;" and it may properly be made a penal offense to labor on Saturday *and* Sunday; and if for two days, then for three, four, five, six, seven; and the state may properly dictate what shall be the works of necessity and mercy permissible for any and all days of the week. Then a man's *life-time* is not *his*, but has been absorbed into the being of a vampire of his own creation. If this can be so, what then becomes of the "inalienable rights" of "life, liberty, and the pursuit of happiness," which the Declaration of Independence asserts?

Logical consequence of Sunday-law theories.

It is, therefore, by the inexorable logic of their position¹ that those who are promoting the passage of Sunday laws are compelled to deny the soundness

Logic compels Sunday-law advocates to renounce American principles.

¹ The logic is this: the right to punish for transgressions of God's law inheres in God alone; that right exists in no human being; therefore, if governments derive their just powers from the consent of the governed,—the people,—then, necessarily, governments have no right to punish for violation of the law of God. But, on the other hand, if the advocates of Sunday laws can get the people to accept their theory,—that governments derive their just powers directly from God,—then the state is to decide just how far it is to enforce the law of God. This is the object they have in view. For all history proves that the state will in the course of time decide just what the logic of the position demands, that it is its prerogative to settle *all* points of morality and religious faith.

American theory.

Church and state theory.

The present Sunday agitation is simply a step—but a very serious one—toward supplanting our American institutions with the despotic church and state institutions from which all of our present Sunday laws descend. And as a result of the spirit of liberty implanted in our patriotic forefathers by birth, watered by the Revolution, and matured under the influence of the greatest statesmen and philosophers of the age, all religious laws received a set-back from which they have never recovered. Sunday legislation was demanded sixty years ago. The report of the House committee, however, was not only adverse, but condemnatory in the extreme. The danger of religious legislation was fully realized. The report said: "It is perhaps fortunate for our country that the proposition should have been made at this early period while the spirit of the Revolution yet exists in full vigor." But how is it now? Has that spirit so far disappeared that religious laws will now be enacted?

Nature of Sunday movement.

Former Sunday movement.

American
principles.

Statement
of a Sunday-
law divine.

Colonel
Shepard's
assertion.

Position of
Sunday-law
advocates.

Authority
of our gov-
ernment.

of the foundation principles of our government, "All men are created equal," and, "Government derives its just powers from the consent of the governed," declaring them to be untrue and dangerous doctrines. At a joint convention of the Sabbath Union and National Reform Association, held at Sedalia, Missouri, last summer, Rev. W. D. Gray said, in open convention, "I do not believe that governments derive their just powers from the consent of the governed, and so the object of this movement is an effort to change that feature of our fundamental law." The assent of the convention to these views was shown by the election of Mr. Gray to the secretaryship of the permanent State organization. Colonel Elliott F. Shepard, president of the American Sabbath Union, in a speech made at Chautauqua last summer, said : "Governments do *not* derive their just powers from the consent of the governed. God is the only lawgiver. His laws are made clear and plain in his word, so that all nations may know what are the laws which God ordained to be kept."

These open statements show that the Sabbath Union and National Reform Association are, by the utterances of their representative men, traitors at heart. They unblushingly declare their disrespect for the principles of the Declaration of Independence, as a preliminary to the request to Congress for the passage of laws in violation of the Constitution. They are at enmity with the Declaration and Constitution because they desire to ignore rights which the one specifies and the other secures to the people.

In this nation every individual is subject to the government, and this government derives its authority from no foreign power. The just powers of this government, then, if not from the governed, must be derived directly from God. We can understand how that the people express their highest civil concep-

tions in voicing human law ; but if there be no human law, and all law is the expression of the perfection of God, what medium shall give voice to it? Upon this point hear Rev. W. F. Crafts, secretary of the American Sabbath Union, in the convention lately held in the city of Washington. The following is *verbatim*:

Who is
God's vice-
gerent?

“MR. HAMLIN: Is it proposed that an end should be put to the running of the street-cars on Sunday?”

Questions
arising.

“MR. CRAFTS: Well, whatever the law may be, I suppose the consciences of the people, and the *officers*, will carry out the law ; otherwise, I suppose the citizens will form a *law and order league*, to aid in the enforcement of the law ; for, even independent of police, local influence, a law and order league is useful in connection with the officers. As to newspapers and street-cars, these would come either under ‘secular work’ or ‘works of necessity and mercy,’ and that is a matter of interpretation by the courts. . . . But the question of horse-cars and newspapers will undoubtedly be discussed by the courts, and something will either be put into the law or decided by the courts shortly after the law is passed.”

To be de-
cided by the
courts.

See also “Notes of Hearing,” before the Senate Committee (of the fiftieth Congress) on Education and Labor, on the joint resolution (Senate resolution 86) proposing an amendment to the Constitution of the United States, respecting establishments of religion and free public schools, page 90:

“SENATOR PAYNE: Let me inquire whether Unitarianism is within the principles of the Christian religion. . . . Is not Unitarianism a direct denial of the divinity of Christ and the Christian church? and is that to be prohibited, or is it to be allowed?”

Another
question.

“THE CHAIRMAN: The court would have to settle that wherever the question was raised.”

To be de-
cided by the
courts.

Religious
questions to
be decided.

There is, then, no controversy but that these questions raised by this line of legislation must come before the courts for adjudication. If this is to be "the American Sabbath," and these the necessary measures for its "preservation," who will be the "American god"—Jehovah? the courts? or the theological instructors behind the bench?

Question
brought up
before.

This is not a new subject in the committee-rooms of Congress. The twentieth Congress was largely petitioned for the stoppage of Sunday mails, and it was then said that "these petitions did in fact call upon Congress to settle what was the law of God." The measure was reported upon adversely, the Senate concurring. See "Register of Debates in Congress," volume v, page 43, and "Abridgments of Debates of Congress," volume x, page 232. The report of Mr. Johnson of Kentucky, from the Senate Committee on Post-offices and Post-roads, to whom these petitions had been referred, is germane to the present issue. It is submitted that the committee of the District of Columbia would in this instance be justified in presenting a similar report on House resolution 3854, on similar ground.

Decided
adversely.

Present laws
of District.

As to the point that the District of Columbia already has Sunday laws in force and enforceable, see "Laws of the District of Columbia, 1868," page 137, sections 10 and 11 (re-adopted in 1874). Section 92, page 9, of the "Revised Statutes of the District of Columbia," says: "The laws of the State of Maryland, not inconsistent with this title, as the same existed on the twenty-seventh day of February, 1801, except as since modified or repealed, continue in force within the District." The authority so to legislate is shown in "Laws of Maryland, 1791" (1 Dorsey, page 269, chapter 45, section 2), in connection with the clause in section 8, article 1, of the Constitution of the United States, where, in citing the powers of

Congress, it says : "To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may by cession of particular States, and the acceptance of Congress, become the seat of government of the United States," etc.

The District being thus under the jurisdiction of Congress, and the Maryland law adopted, the "Revised Statutes of the District of Columbia" (section 1049, page 122) determines what court has jurisdiction of cases coming under this law. It is there found to be the police court, and section 1054, same page, provides that "the court may enforce any of its judgments or sentences, by fine or imprisonment, or both." Therefore, although the penalty affixed to the Maryland law may have become obsolete or difficult of determination, authority is lodged in the court having jurisdiction to affix its penalty by "fine or imprisonment, or both;" and in evidence of the fact that the law survives, although the penalty may become obsolete, see "United States v. Royall, 3 Cranch, Circuit Court Reports," pages 620-25.

Powers
of Congress.

Court hav-
ing jurisdic-
tion.

If Congress ever had the power to adopt such a law, the Maryland Sunday law of 1723 is still in force and enforceable in the District of Columbia, and to adopt another would be simply cumulative legislation.

But, on the other hand, if it be true that, when "legislating for the District of Columbia, Congress is bound by the prohibitions of the Constitution" (see United States v. More, 3 Cranch, 160), and Congress never rightfully adopted this law into the statutes of the District, then Congress would be guilty of cumulative unconstitutionality in passing the law contemplated in House resolution 3854.

To pass bill
would be
cumulative
unconstitu-
tionality.

Respectfully submitted,

W. H. MCKEE,

For the National Religious Liberty Association.

SUPREME COURT OF WISCONSIN.

DECISION AGAINST THE READING OF THE BIBLE
IN THE PUBLIC SCHOOLS.¹

NEW YORK "INDEPENDENT."

Approval
of decision.

We have read, with hearty approval, the opinions recently delivered in the Supreme Court of Wisconsin in regard to the question of the Bible in the public schools of that State, the full text of which has been published in the Albany "Law Journal." This reading only confirms our opinion of this decision, as heretofore expressed.

Opinions
delivered.Statement
of case.

Mr. Justice Lyon delivered the opinion of the court, and Messrs. Justices Cassody and Orton delivered concurring opinions. The case before the court was that of a petition for a *mandamus*, commanding the School Board in the city of Edgerton to cause the teachers in one of the public schools of that city to discontinue the practice of reading, during school-hours, portions of King James's Version of the Bible. The petitioners for the *mandamus* were residents and tax-payers in Edgerton, and presumptively Catholics in their religious faith, although this fact is not stated in these deliverances. They complained of the practice above referred to.

This petition brought squarely before the court the question whether such a practice is consistent with the Constitution of the State of Wisconsin; and this question the court unanimously answered in the negative. And that our readers may the better understand the case, we submit in the following order the several points decided:

Summary
of points
decided.

1. The first point is the construction of article x, section 3, of the Constitution of the State, which declares that "the Legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable, and such schools shall be free and without charge for tuition to all children between the ages of four and twenty years, and *no sectarian instruction shall be allowed therein.*" The court held that the reading of King James's Version of the Bible in the public schools of the State during school-hours is "sectarian instruction" within the meaning of this constitutional prohibition, and

Reading
of Bible
sectarian
instruction.Favorable
reception of
decision.

¹ The favor with which this decision of the Wisconsin Supreme Court is received by the public, by liberal Christians as well as by unbelievers, is well expressed in the comments on and summary of the case by the New York "Independent," the leading religious journal of the country. The summary is inserted prefatorial to the opinion of Mr. Justice Orton following. The editorial appeared in the "Independent" of July 19, 1890, and expresses the views of the most careful thinkers.

hence inconsistent therewith. Mr. Justice Lyon said that the prohibition "manifestly refers exclusively to instruction in *religious* doctrines," and in such doctrines as "are believed by some religious sects and rejected by others." The court took judicial knowledge of the fact that King James's Version of the Bible is not accepted and used by *all* "religious sects" in Wisconsin, but is accepted by some of these sects and rejected by others. Hence, as between them, all having the same constitutional rights, the court held that version to be a "sectarian" book, and the reading of it in the manner and for the purpose set forth in the complaint to be forbidden by the Constitution of the State.

Constitution construed.

How any other conclusion could have been drawn from the premises, we are not able to see. We presume that there is not a Protestant in Wisconsin who would hesitate a moment on the point, if the book read had been the Douay Version of the Bible, which is acceptable to Catholics, or the Koran, or the Book of Mormon. The reading of such a book as a part of school exercises, whether for worship or religious instruction, would be offensive to Protestants, and they would have good cause for complaint, just as the reading of King James's Version, which is sometimes called the Protestant Bible, is offensive to Catholics. It should not be forgotten that, under the Constitution of Wisconsin, Catholics and Protestants have on this subject precisely the same rights, and that neither can claim any precedence over the other. The Constitution of that State makes no distinction between them, and determines no question relating to their differences, or any other religious differences. It deals with all the people simply as *citizens*, no matter what may be their religious tenets, or whether they have any such tenets.

Correctness of conclusion.

2. The second point decided is that "the practice of reading the Bible in such schools can receive no sanction, from the fact that pupils are not compelled to remain in the school while it is being read." On this point we quote, as follows, the language of Mr. Justice Lyon :

Equality of Catholics and Protestants.

"When, as in this case, a small minority of the pupils in the public school is excluded, for any cause, from a stated school exercise, particularly when such cause is apparent hostility to the Bible, which a majority of the pupils have been taught to revere, from that moment the excluded pupil loses caste with his fellows, and is liable to be regarded with aversion, and subjected to reproach and insult. But it is a sufficient refutation of the argument that the practice in question tends to destroy the equality of the pupils, which the Constitution seeks to establish and protect, and puts a portion of them at a serious disadvantage in many ways with respect to the others."

Tendency to destroy equality.

The plain fact is that *not* to compel the attendance upon such reading, of the children of parents who object to it, for the sake of continuing the reading, is a virtual confession that the reading has a "sectarian" character, as between those who desire it and those who object to it. It is merely an attempt to get round what is apparent on the face of the case.

Argument virtually conceded.

Reading of
Bible an act
of worship.

3. The third point decided is that "the reading of the Bible is an act of worship, as that term is defined in the Constitution ; and, hence, the tax-payers of any district who are compelled to contribute to the erection and support of common schools, have the right to object to the reading of the Bible, under the Constitution of Wisconsin, article 1, section 18, clause 2, declaring that no man shall be compelled to . . . erect or support any place of worship." This provision is in what is called the "Declaration of Rights." The opinion delivered by Mr. Justice Cassody on this point is, to our understanding, clear and conclusive. Bible-reading in public schools has the form and intention of religious worship ; and this being the fact, then to compel the people by taxation to erect and support public schools in which such reading is a practice, is to compel them by law to erect and support places of worship. The fact that these places are also used for other purposes does not relieve the difficulty. The Constitution expressly declares that the people shall not "be compelled to erect *any* place" that is used for the purpose of worship. To tax a man to erect and support a public school, and then to introduce the element of religious worship into that school, is to make a combination which the Constitution forbids.

State money
expended for
religious
instruction.

4. The fourth point decided is that, "as the reading of the Bible at stated times in a common school is religious instruction, the money drawn from the State treasury in support of such school is 'for the benefit of a religious seminary,' within the meaning of the Constitution of Wisconsin, article 1, section 18, clause 4, prohibiting such an appropriation of the funds of the State." The design of the clause referred to is to prevent the State from using the public funds to defray the expenses of religious instruction ; and this design is frustrated just as really when these funds are used to support common schools in which such instruction is given, as it would be if these funds were used to support "religious societies or religious or theological seminaries." Mr. Justice Cassody, in his opinion, sets forth this point very clearly.

Conclusions
sound.

We have thus given the pith of the argument on this subject as stated by the three justices of the Supreme Court of Wisconsin. We see no escape from the conclusion reached, and have no desire to escape it, since we thoroughly believe in its correctness everywhere. To the argument that "the exclusion of Bible-reading from the district schools is derogatory to the value of the Holy Scriptures, a blow to their influence upon the conduct and consciences of men, and disastrous to the cause of religion," Mr. Justice Lyon thus replied :

Sacred
things should
be left in
sacred hands.

"We most emphatically reject these views. The priceless truths of the Bible are best taught to our youth in the church, the Sabbath and parochial schools, the social religious meetings, and above all by parents in the home circle. There those truths may be explained and enforced, the spiritual welfare of the child guarded and protected, and his spiritual nature directed and cultivated, in accordance with the dictates of the parental conscience. The Constitution does not interfere with such

teaching and culture. It only banishes theological polemics from the district schools. It does this, not because of any hostility to religion, but because the people who adopted it believed that the public good would thereby be promoted, and they so declared in the preamble. Religion teaches obedience to law, and flourishes best where good government prevails. The constitutional prohibition was adopted in the interests of good government, and it argues but little faith in the vitality and power of religion, to predict disaster to its progress because a constitutional provision, enacted for such a purpose, is faithfully executed."

Constitution excludes religion from state schools only.

The doctrine of the Constitution of Wisconsin, as thus settled by the Supreme Court of that State, is, in our judgment, the true doctrine for every State in the Union. It remits the question of religious instruction, as to what it shall be, as to the agency giving it, and as to the cost thereof, to voluntary private and individual effort, and devotes the public school, created and regulated by law, and supported by a general taxation of the people, exclusively to secular education. This principle is in harmony with the nature and structure of our political institutions, and is, moreover, just and equitable as between religious sects. It favors no one of them, and proscribes no one of them; and, while it leaves them all free to propagate their religious beliefs in their own way, and at their own expense, it gives to the whole people, at the cost of the whole, a system of popular education that is certainly good as far as it goes, and is *all* that the State can give, without itself becoming a religious propagandist. Catholics and Protestants alike ought to be satisfied with it. There is no other basis on which the school question can be justly settled as between different religious sects.

The true doctrine.

All religious sects free and equal.

Only just basis.

OPINION BY JUSTICE H. S. ORTON.

I most fully and cordially concur in the decision, and in the opinions of Justices Lyon and Cassody, in this case.

Decision concurred in.

It is not needful that any other opinion should be written, but I thought it proper to state briefly some of the reasons which have induced such concurrence in the decision.

"The right of every man to worship Almighty God according to the dictates of his own conscience, shall never be infringed; nor shall any man be compelled to attend, erect, or support any place of worship, . . . nor shall any control or interference with the rights of conscience be permitted, or any

Provisions of Constitution.

Provisions of
Constitution.

preference be given by law to any religious establishments or modes of worship." Constitution, article 1, section 18.

"No religious test shall ever be required as a qualification for any office of public trust under the State, and no person shall be rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion." Constitution, article 1, section 19.

"The interest of 'the school fund,' and all other revenues derived from the school lands, shall be exclusively applied," etc., "to the support and maintenance of *common schools* in each school-district," etc. Article 10, section 2, subdivision 1.

Sectarian
instruction
not allowed.

"The Legislature shall provide by law for the establishment of district schools which shall be as nearly *uniform* as practicable; and such schools shall be free, and without charge for tuition to *all* children between the ages of four and twenty years; and no *sectarian* instruction shall be allowed therein." Article 10, section 3.

"Each town and city shall be required to raise *by tax* annually, for the support of *common schools* therein, a sum not less," etc. Article 10, section 4. "Provision shall be made by law, for the distribution of the income of the school fund among the several towns and cities of the State, for the support of *common schools* therein," etc. Article 10, section 5.

Complete
separation of
the State from
religion.

These provisions of the Constitution are cited together to show how completely this State, as a civil government, and all its civil institutions, are divorced from all possible connection or alliance with any and all religions, religious worship, religious establishments, or modes of worship, and with everything of a religious character or appertaining to religion; and to show how completely all are protected in their religion and rights of conscience, and that no one shall

Complete
protection
to all.

ever be taxed or compelled to support any religion or place of worship, or to attend upon the same, and more especially to show that our *common schools*, as one of the institutions of the State created by the Constitution, stand, in all these respects, like any other institution of the State, completely excluded from all possible connection or alliance with religion, or religious worship, or with anything of a religious character, and guarded by the constitutional prohibition that "no sectarian instruction shall be *allowed* therein." They show also that the common schools are free to all alike, to all nationalities, to all sects of religion, to all ranks of society, and to all complexions. For these equal privileges and rights of instruction in them, all are taxed equally and proportionately. The constitutional name, "common schools," expresses their equality and universal patronage and support. *Common* schools are not common, as being low in character or grade, but *common* to all alike, to everybody and to all sects or denominations of religion, but without bringing religion into them. The common schools, like all the other institutions of the State, are protected by the Constitution from all "control or interference with the rights of conscience," and from all preferences given by law to any religious establishments or modes of worship. As the State can have nothing to do with religion, except to protect every one in the enjoyment of his own, so the common schools can have nothing to do with religion, in any respect whatever. They are as completely *secular* as any of the other institutions of the State, in which all the people, alike, have equal rights and privileges. The people cannot be taxed for religion in schools, more than anywhere else. Religious instruction in the common schools, is clearly prohibited by these general clauses of the Constitution, as religious instruction or worship in any other department

Taxes not to be used to pay for religious teaching.

Complete separation of the schools from religion.

Our free public schools

Nature of our public schools.

No preference to be shown.

Schools absolutely secular.

An important point.

Constitution
intended to
exclude every-
thing pertain-
ing to religion.

Principle
of taxation.

Disastrous
effects of state
religions.

Intolerance
manifested
by religious
partisans.

of State, supported by the revenue derived from taxation. The clause that "no sectarian instruction shall be allowed therein," was inserted *ex industria* to exclude everything pertaining to religion. They are called by those who wish to have not only religion, but their own religion, taught therein, "godless schools." They are godless, and the educational department of the government is godless, in the same sense that the executive, legislative, and administrative departments are godless. So long as our Constitution remains as it is, no one's religion can be taught in our common schools. By religion, I mean religion as a system, not religion in the sense of natural law. Religion in the latter sense is the source of all law and government, justice and truth. Religion as a system of belief cannot be taught without offense to those who have their own peculiar views of religion, no more than it can be without offense to the different sects of religion. How can religion, in this sense, be taught in the common schools, without taxing the people for or on account of it. The only object, purpose, or use for taxation by law in this State, must be exclusively *secular*. There is no such source and cause of strife, quarrel, fights, malignant opposition, persecution and war, and all evil in the State, as religion. Let it once enter into our civil affairs, our government would soon be destroyed. Let it once enter into our common schools, they would be destroyed. Those who made our Constitution, saw this, and used the most apt and comprehensive language in it, to prevent such a catastrophe. It is said, If reading the Protestant version of the Bible in school is offensive to the parents of some of the scholars, and antagonistic to their own religious views, *their children can retire*.¹ They ought not to

¹The intolerance manifested by these religious partisans in Wisconsin is quite frequently displayed in the speeches and writings of the

be compelled to go out of the school for such a reason, for one moment. The suggestion itself concedes the whole argument. That version of the Bible is hostile to the belief of many who are taxed to support the common schools, and who have equal rights and privileges in them. It is a source of religious and sectarian strife. That is enough. It violates the letter and spirit of the Constitution. No State Constitution ever existed, that so completely excludes and precludes the possibility of religious strife in the civil affairs of the State, and yet so fully protects all alike in the enjoyment of their own religion. All sects and denominations may teach the people their own doctrines in all proper places. Our Constitution protects all, and favors none. But they must keep out of the common schools and civil affairs. It requires but little argument to prove that the Protestant version of the Bible, or any other version of the Bible, is the source of religious strife and opposition, and opposed to the religious belief of many of our

Suggestion
concedes
argument.

Violative of
constitutional
provisions.

Equality
insured.

All versions
of the Bible
sectarian.

advocates of religious legislation. Especially is this true of those who are so strenuously working for Sunday laws. Many quotations might be made, but the following sufficiently illustrate the spirit of the movement :

Intolerance
of advocates of
religious legis-
lation.

Rev. E. B. Graham, an ardent Sunday-law advocate, in an address delivered at York, Nebraska, said : " We might add in all justice, if the opponents of the Bible do not like our government and its Christian features, *let them go to some wild, desolate land*, and in the name of the devil, and for the sake of the devil, subdue it, and set up a government of their own on infidel and atheistic ideas ; and then, if they can stand it, *stay there till they die.*" " Christian Statesman," May 21, 1885.

Intolerant
statement of
a Sunday-law
advocate.

At a convention in New York City, February 27, 1873, Dr. Jonathan Edwards, in a speech, after saying that Sabbatarians must be classed as, and named, "atheists," continued : "What are the rights of the atheist? . . . *I would tolerate him as I would a conspirator.* The atheist is a dangerous man. . . . Tolerate atheism, sir? There is nothing out of hell that I would not tolerate as soon. The atheist may live, as I said, but, God helping us, the taint of his destructive creed shall not defile any of the civil institutions of all this fair land ! Let us repeat : atheism and Christianity are contradictory terms. They are incompatible systems. *They cannot dwell together on the same continent.*"

Intolerance
perfected.

Protestant-
ism a sect.

Value of our
public schools.

A parallel
act.

Religion
needs no state
support.

Importance
of case.

Evil results
of church and
state.

people. It is a *sectarian* book. The Protestants were a very small sect in religion; at one time, and they are a sect yet, to the great Catholic Church against whose usages they protested, and so is their version of the Bible sectarian, as against the Catholic version of it. The common school is one of the most indispensable, useful, and valuable civil institutions this State has. It is democratic, and free to all alike, in perfect equality, where all the children of our people stand on a common platform, and may enjoy the benefits of an equal and common education. An enemy to our common schools is an enemy to our State government. It is the same hostility that would cause any religious denomination, that had acquired the ascendancy over all others, to remodel our Constitution, and change our government and all of its institutions, so as to make them favorable only to itself, and exclude all others from their benefits and protection. In such an event, religious and sectarian instruction will be given in all schools. Religion needs no support from the state. It is stronger and much purer without it. This case is important and timely. It brings before the courts a case of the plausible, insidious, and apparently innocent entrance of religion into our civil affairs, and of an assault upon the most valuable provisions of the Constitution. Those provisions should be pondered and heeded by all of our people, of all nationalities and of all denominations of religion, who desire the perpetuity and value the blessings of our free government. That such is their meaning and interpretation, no one can doubt, and it requires no citation of authorities to show. It is religion and sectarian instruction that are excluded by them. Morality and good conduct may be inculcated in the common schools, and should be. The connection of church and state corrupts religion, and makes the state despotic.

APPENDIX

APPENDIX.

STATE CONSTITUTIONS.

PROVISIONS OF THE CONSTITUTIONS OF THE SEVERAL STATES GUARANTEEING OR RESTRICTING LIBERTY OF CONSCIENCE.¹

ALABAMA.

Ratified
Nov. 16, 1875.

ARTICLE I.—DECLARATION OF RIGHTS.

SECTION 4. That no religion shall be established by law ; that no preference shall be given by law to any religious sect, society, denomination, or mode of worship ; that no one shall be compelled by law to

Religious
liberty.

¹The provisions of the State Constitutions which either guarantee or restrict the rights of conscience are here inserted, though in the fundamental laws very few restrictions are made upon the rights of the individual ; and when they are made, they not infrequently manifest their injustice and incompatibility with freedom by being absolutely contradictory to some of the provisions of the declaration of rights. To illustrate: Section 26 of the declaration of rights of the Constitution of Arkansas declares that "no religious test shall ever be required of any person as a disqualification to vote or hold office ; nor shall any person be rendered incompetent to be a witness on account of his religious belief ;" and then in article 19, section 1, we find the following : "No person who denies the existence of a God shall hold any office in the civil departments of this State, nor be competent to testify as a witness in any court." In other States ministers of the gospel are disqualified from holding any civil office.

Restrictions
of rights in
Constitutions
not frequent.

Contradictory
provisions.

In some States, also, denominational property is exempted from taxation. The injustice of this in a country professing complete separation of the state and the church is manifest ; for if church property is not taxed, other property must be taxed just that much more. Therefore other property is taxed, though indirectly, to help support all churches or church property which is exempted from taxation. It is not the amount of money paid, but the wrong principle, that should arouse the opposition of the American people to this relic of the ecclesiastical states of Europe.

Exemption
of church
property from
taxation.

In the State of Vermont the declaration is made that "every sect or denomination of Christians ought to observe the Sabbath, or Lord's day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God." Thus it is evident that the religio-political ideas of mediæval Europe have never been fully eradicated from our political institutions ; and absolute religious liberty can never be attained while these state and church clogs are left to impede our national progress.

Sunday law
in Vermont
Constitution.

In the arrangement of the Constitutions, the marks of ellipses are omitted where sections are left out, as the numbering of the sections sufficiently indicates the omission. Where irrelevant matter has been omitted from sections, the omission is indicated in the usual way.

Religious
liberty.

attend any place of worship, nor to pay any tithes, taxes, or other rate, for building or repairing any place of worship, or for maintaining any minister or ministry ; that no religious test shall be required as a qualification to any office or public trust under this State ; and that the civil rights, privileges, and capacities of any citizen shall not be in any manner affected by his religious principles.

ARTICLE XII.—EDUCATION.

Public funds
not to be used
for sectarian
purposes.

SECTION 8. No money raised for the support of the public schools of the State shall be appropriated to or used for the support of any sectarian or denominational school.

Ratified
Oct. 13, 1874.

ARKANSAS.

ARTICLE II.—DECLARATION OF RIGHTS.

Class
legislation
forbidden.

SECTION 18. The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

Religious
liberty.

SECTION 24. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences ; no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent. No human authority can, in any case or manner whatsoever, control or interfere with the right of conscience ; and no preference shall ever be given by law to any religious establishment, denomination, or mode of worship above any other.

Sectarian
preference
prohibited.

SECTION 25. Religion, morality, and knowledge being essential to good government, the General Assembly shall enact suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship.

Religious
tests pro-
hibited.

SECTION 26. No religious test shall ever be required of any person as a qualification to vote or hold office ; nor shall any person be rendered incompetent to be a witness on account of his religious belief ; but nothing herein shall be construed to dispense with oaths or affirmations.

Rights to be
enforced.

SECTION 29. This enumeration of rights shall not be construed to deny or disparage others retained by the people ; and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government, and shall forever remain inviolate ; and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

ARTICLE XIX.—MISCELLANEOUS PROVISIONS.

Religious
test.

SECTION 1. No person who denies the being of a God shall hold any office in the civil departments of this State, nor be competent to testify as a witness in any court.

CALIFORNIA.

Ratified
May 7, 1879.

ARTICLE I.—DECLARATION OF RIGHTS.

SECTION 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be guaranteed in this State; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or the safety of the State.

Religious
liberty.

ARTICLE IX.—EDUCATION.

SECTION 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of the State.

Public funds
not to be used
for sectarian
purposes.

ARTICLE XX.—MISCELLANEOUS SUBJECTS.

SECTION 7. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.¹

Marriage
contract civil.

¹This section is simply a constitutional provision for a firmly established American principle. The marriage contract is purely a civil contract, and the absence of religious ceremonies no more detracts from the validity of the marriage than does the absence of religious ceremonies detract from the validity of any other civil contract. In the history of American jurisprudence there is probably but a single isolated exception to this principle,—a Massachusetts decision in which it was held that “parties could not solemnize their own marriage,” and that a marriage by mutual agreement, not in accordance with the statute, was void. “Johnson’s Universal Cyclopedia,” says:

American
principle.

“In the United States by the law which prevails very generally, if not, in fact, universally, throughout the States, marriage is regarded as wholly based upon contract, upon the present mutual consent of the parties, and no special forms are necessary to its validity. If a man and a woman, by words of present import, promise and agree with each other to be husband and wife, the contract and the resulting status of marriage are perfected; solemnization by a clergyman or by a civil magistrate, the presence of witnesses, and all the ceremonies and forms which are customarily used, even those provided for by statute, are nothing more than convenient means of perpetuating the evidence of the contract between the spouses, which itself constitutes the marriage; *they are not in the least essential to its efficacy*. Whenever certain preliminary steps, such as license, notice, and the like, are prescribed by statute, a failure to comply with these provisions does not impair the marriage which has been contracted without their presence: it simply subjects the delinquent parties to a slight pecuniary penalty. The words of the contract by which the parties signify their intention must be *in presenti* (of a present force and operation), and they do not need to be followed by a cohabitation, since the status of marriage arises from the mental and not the physical union of the spouses. In this respect the United States law of marriage is identical with that which has long prevailed in Scotland, so that the decision of the Scotch courts furnish valuable precedents which may be followed by our own tribunals.”

No forms
necessary to
validity of
marriage.Violations
of statutes do
not invalidate
a marriage.

Leading case.

The leading case on this question is that of *Dalrymple v. Dalrymple*, 4 English Ecclesiastical Reports, 485, the decision being written by Lord Stowell, one of England's most distinguished judges. From that able opinion the following is taken:

Nature of marriage.

"Marriage, in its origin, is a contract of natural law. It may exist between two individuals of different sexes, although no third person existed in the world, as happened in the case of the common ancestors of mankind. It is the parent, not the child, of civil society. In civil society it becomes a civil contract, regulated and prescribed by law, and endowed with civil consequences. . . . It was natural that such a contract should, under the religious system which prevailed in Europe, fall under ecclesiastical notice and cognizance with respect both to its theological and its legal construction, though it is not unworthy of remark that amidst the manifold ritual provisions *made by the divine Lawgiver* of the Jews for various offices and transactions of life, *there is no ceremony prescribed for the celebration of marriage.* . . .

Nature of contract.

No divine ceremony prescribed.

Influence of Reformation.

"At the Reformation this country disclaimed, amongst other opinions of the Romish Church, the doctrine of a sacrament in marriage, though still retaining the idea of its being of divine institution in its general origin, and on that account, as well as of the religious forms that were prescribed for its regular celebration as an *holy* estate, *holy matrimony*; but it likewise retained those rules of the canon law which had their foundation, not in the sacrament or in any religious view of the subject, but in the *natural and civil contract of marriage.*"

On this question, Mr. Bishop, in his treatise on "Marriage and Divorce," says:

What constitutes marriage.

"We have seen that the law compels no one to assume the matrimonial status. Therefore every marriage requires for its constitution a consent of the parties. The consent must be mutual; for, as there cannot be a husband without a wife, one of them cannot be married without the other. This mutual consent is in fact a contract, differing not essentially from other contracts. It is that circumstance without which the status of marriage is never superinduced upon the parties. And by the law of nature, by the canon law prior to the Council of Trent, perhaps by the law of England as it stood before the passage of the first marriage act, by the law of Scotland, and by the laws of several of the United States, *nothing need be added to this simple consent to constitute perfect marriage.*

Consent the only requisite.

Statutory provisions.

"Even where a statute requires the marriage to be attended with specified formalities, in order to its validity, this mutual consent of the parties is no less essential. The forms are not a substitute for it. *They are but methods of declaring and substantiating it: having reference to the matter of publicity or evidence.* If they are gone through with, without the added consent, the marriage is a nullity, as regards both the parties and third persons." Fifth edition, volume i, sections 218, 219.

Nature of marriage.

In *Dumaresq v. Fishly* (1821), 3 A. K. Marshall (Kentucky), the Chief Justice said:

"Marriage is nothing but a contract; and to render it valid, it is only necessary upon the principles of natural law that the parties should be able to contract, willing to contract, and should actually contract. A marriage thus made without ceremony was, according to the simplicity of the ancient common law, deemed valid to all purposes."

Requisites to a valid marriage.

Mr. Greenleaf, also, in his treatise on evidence, volume ii, page 531, says:

"Marriage is a civil contract *jure gentium*, to the validity of which the consent of the parties able to contract is all that is required by natural or public law. . . . And though in most if not all the United States, there are statutes regulating the celebration of marriage and inflicting penalties on all who disobey the regulations, yet it is generally considered that in the absence of any positive statute declaring that all marriages not celebrated in the prescribed manner shall be absolutely void, or that none but certain magistrates or ministers shall solemnize a marriage, *any marriage regularly made according to the common law, without observing the statutory regulations, would still be a valid marriage.*"

Violations of statutes do not invalidate a marriage.

I also quote from the case of *Meister v. Moore* (1877), 96 United States, 76, the opinion being delivered by Mr. Justice Strong of the United States Supreme Court:

Opinion of United States Supreme Court.

"That such a contract [*per verba de presenti*] constitutes a marriage at common law there can be no doubt, in view of the adjudications made in this country from its earliest settlement to the present day. Marriage is everywhere regarded as a civil contract."

COLORADO.

Ratified
July 1, 1876.

ARTICLE II.—BILL OF RIGHTS.

SECTION 4. That the free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the good order, peace, or safety of the State. No person shall be required to attend or support any ministry or place of worship, religious sect, or denomination against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

Religious
liberty.

ARTICLE IX.—EDUCATION.

SECTION 7. Neither the General Assembly, nor any county, city, town, township, school-district, or other public corporation shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution controlled by any church or sectarian denomination whatsoever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church or for any sectarian purpose.

Public funds
not to be used
for sectarian
purposes.

SECTION 8. No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the State, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian tenets or doctrines shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color.

Religious
tests pro-
hibited.Sectarian
teaching
prohibited.

CONNECTICUT.

Ratified
Oct. 5, 1818.

ARTICLE I.—DECLARATION OF RIGHTS.

SECTION 3. The exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons in this State, provided that the right hereby declared and established shall not be so construed as to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the State.

Religious
liberty.

SECTION 4. No preference shall be given by law to any Christian sect or mode of worship.

ARTICLE VII.—OF RELIGION.

Provisions
concerning
religion.

Religious
preference
prohibited.

SECTION 1. It being the duty of all men to worship the Supreme Being, the great Creator and Preserver of the Universe, and their right to render that worship in the mode most consistent with the dictates of their consciences, no person shall by law be compelled to join or support, nor be classed with, or associated to, any congregation, church, or religious association; but every person now belonging to such congregation, church, or religious association, shall remain a member thereof until he shall have separated himself therefrom, in the manner herein-after provided. And each and every society or denomination of Christians in this State shall have and enjoy the same and equal powers, rights, and privileges; and shall have power and authority to support and maintain the ministers or teachers of their respective denominations, and to build and repair houses for public worship by a tax on the members of any such society only, to be laid by a major vote of the legal voters assembled at any society meeting, warned and held according to law, or in any other manner.

SECTION 2. If any person shall choose to separate himself from the society or denomination of Christians to which he may belong, and shall leave a written notice thereof with the clerk of such society, he shall thereupon be no longer liable for any future expenses which may be incurred by said society.

Framed
Nov. 8, 1831.

DELAWARE.

ARTICLE I.

Religious
liberty.

SECTION 1. Although it is the duty of all men frequently to assemble together for the public worship of the Author of the universe, and piety and morality, on which the prosperity of communities depends, are thereby promoted, yet no man shall or ought to be compelled to attend any religious worship, to contribute to the erection or support of any place of worship, or to the maintenance of any ministry, against his own free will and consent; and no power shall or ought to be vested in or assumed by any magistrate that shall, in any case, interfere with, or in any manner control, the rights of conscience in the free exercise of religious worship; nor shall a preference be given by law to any religious societies, denomination, or modes of worship.

Religious
tests pro-
hibited.

SECTION 2. No religious test shall be required as a qualification to any office or public trust under this State.

We declare that everything in this article is reserved out of the general powers of government hereinafter mentioned.

ARTICLE VII.

SECTION 8. The rights, privileges, immunities, and estates of religious societies and corporate bodies shall remain as if the Constitution of this State had not been altered. No ordained clergyman or ordained

preacher of the gospel of any denomination shall be capable of holding any civil office in the State, or of being a member of either branch of the Legislature while he continues in the exercise of the pastoral or clerical functions.

Religious
disqualifica-
tions.

FLORIDA.

Ratified
May, 1868.

ARTICLE I.—DECLARATION OF RIGHTS.

SECTION 5. The free exercise and enjoyment of religious profession and worship shall forever be allowed in this State, and no person shall be rendered incompetent as a witness on account of his religious opinions ; but the liberty of conscience hereby secured shall not be so construed as to justify licentiousness, or practices subversive of the peace and safety of the State.

Religious
liberty.

SECTION 23. No preference can be given by law to any church, sect, or mode of worship.

Religious
preference
prohibited.

GEORGIA.

Ratified
Mar. 11, 1868.

ARTICLE I.—DECLARATION OF FUNDAMENTAL PRINCIPLES.

SECTION 1. Protection to person and property is the paramount duty of government, and shall be impartial and complete.

Protection
to be im-
partial.

SECTION 6. Perfect freedom of religious sentiment shall be, and the same is hereby secured, and no inhabitant of this State shall ever be molested in person or property, or prohibited from holding any public office or trust, on account of his religious opinion ; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the people.

Religious
liberty.

IDAHO.

Ratified
Nov. 6, 1889.

ARTICLE I.—DECLARATION OF RIGHTS.

SECTION 4. The exercise and enjoyment of religious faith and worship shall forever be guaranteed ; and no person shall be denied any civil or political right, privilege, or capacity, on account of his religious opinions ; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness, or justify polygamous or other pernicious practices, inconsistent with morality or the peace or safety of the State. . . . No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, or pay tithes against his consent ; nor shall any preference be given by law to any religious denomination or mode of worship. . . .

Religious
liberty.

Polygamy
prohibited.

Religious
preferences
forbidden.

ARTICLE IX.—EDUCATION AND SCHOOL LANDS.¹

¹This article forbids the appropriation of "any public fund or moneys whatever" to aid in any way any religious or sectarian society, purpose, or institution. It also forbids religious tests or qualifications, and the use of any publications of a "political, sectarian, or denominational character" in its public schools.

Sectarian
appropriations
prohibited.

Ratified
July 2, 1870.

ILLINOIS.

ARTICLE II.—BILL OF RIGHTS.

Religious
liberty.

SECTION 3. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed ; and no person shall be denied any civil or political right, privilege, or capacity on account of his religious opinions ; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

ARTICLE VIII.—EDUCATION.

Public funds
not to be used
for sectarian
purposes.

SECTION 3. Neither the General Assembly nor any county, city, town, township, school-district, or other public corporation, shall ever make any appropriation, or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever ; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such corporation, to any church, or for any sectarian purpose.

Ratified 1851.

INDIANA.

ARTICLE I.—BILL OF RIGHTS.

Religious
liberty.

SECTION 2. All men shall be secured in their natural right to worship Almighty God according to the dictates of their own consciences.

SECTION 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

Religious
preferences
prohibited.

SECTION 4. No preference shall be given by law to any creed, religious society, or mode of worship ; and no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent.

Religious
tests pro-
hibited.

SECTION 5. No religious test shall be required as a qualification for any office of trust or profit.

SECTION 6. No money shall be drawn from the treasury for the benefit of any religious or theological institution.

SECTION 7. No person shall be rendered incompetent as a witness in consequence of his opinions on matters of religion.

Administra-
tion of oaths.

SECTION 8. The mode of administering an oath or affirmation shall be such as may be most consistent with, and binding upon, the conscience of the person to whom such oath or affirmation may be administered.

IOWA.

Ratified
Aug. 3, 1857.

ARTICLE I.—BILL OF RIGHTS.

SECTION 3. The General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister or ministry.

Religious
liberty.

SECTION 4. No religious test shall be required as a qualification for any office or public trust, and no person shall be deprived of any of his rights, privileges, or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion. . . .

Religious
tests pro-
hibited.

SECTION 6. All laws of a general nature shall have a uniform operation. The General Assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens.

Class
legislation
forbidden.

KANSAS.

Ratified
Oct. 4, 1859.

BILL OF RIGHTS.

SECTION 7. The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control of, or interference with, the rights of conscience be permitted; nor any preference be given by law to any religious establishment or mode of worship. No religious test or property qualification shall be required for any office of public trust, nor for any vote at any election; nor shall any person be incompetent to testify on account of religious belief.

Religious
liberty.

ARTICLE VI.—EDUCATION.

SECTION 8. No religious sect or sects shall ever control any part of the common-school or university funds of the State.

School
funds.

KENTUCKY.

Ratified 1850.

ARTICLE II.—CONCERNING THE LEGISLATIVE DEPARTMENT.

SECTION 27. No person, while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect, . . . shall be eligible to the General Assembly. . . .

Religious
disability.

ARTICLE III.—CONCERNING THE EXECUTIVE DEPARTMENT.

SECTION 6. No member of Congress, or person holding any office under the United States, or minister of any religious society, shall be eligible to the office of governor.

Religious
disability.

ARTICLE VIII.—GENERAL PROVISIONS.

Administra-
tion of oaths.

SECTION 7. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the General Assembly the most solemn appeal to God.

ARTICLE XIII.—BILL OF RIGHTS.

Despotic
power unre-
publican.

SECTION 2. That absolute, arbitrary power over the lives, liberty, and property of freemen exists nowhere in a republic, not even in the largest majority.

Religious
liberty.

SECTION 5. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences ; that no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent ; that no human authority ought, in any case whatever, to control or interfere with the rights of conscience ; and that no preference shall ever be given by law to any religious societies or modes of worship.

SECTION 6. That the civil rights, privileges, or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion.

Rights to be
enforced.

SECTION 30. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate, and that all laws contrary thereto, or contrary to this Constitution, shall be void.

Ratified
Aug. 18, 1868.

LOUISIANA.

TITLE I.—BILL OF RIGHTS.

Religious
liberty.

ARTICLE 12. Every person has the natural right to worship God according to the dictates of his conscience. No religious test shall be required as a qualification for office.

Ratified
Jan. 5, 1820.

MAINE.

ARTICLE I.—DECLARATION OF RIGHTS.

Religious
liberty.

SECTION 3. All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no one shall be hurt, molested, or restrained in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, nor for his religious professions or sentiments, provided he does not disturb the public peace, nor obstruct others in their religious worship ; and all persons demeaning themselves peaceably, as good members of the State, shall be equally under the protection of the laws, and no subordination nor preference of any one sect or denomination to another shall ever be established by law, nor shall any religious test be required as a qualification for any office or trust

under this State ; and all religious societies in this State, whether incorporate or unincorporate, shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance.

Rights
secured.

- MARYLAND.

Ratified
Sept. 18, 1867.

DECLARATION OF RIGHTS.

ARTICLE 36. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty ; wherefore, no person ought, by any law, to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace, or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil, or religious rights ; nor ought any person to be compelled to frequent or maintain, or contribute, unless on contract, to maintain any place of worship, or any ministry ; nor shall any person, otherwise competent, be deemed incompetent as a witness, or juror, on account of his religious belief ; *Provided*, he believes in the existence of God, and that, under his dispensation, such person will be held morally accountable for his acts, and be rewarded or punished therefor, either in this world or the world to come.

Religious
liberty.

Religious
tests.

ARTICLE 37. That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God ; nor shall the Legislature prescribe any other oath of office than the oath prescribed by this Constitution.

ARTICLE III.—LEGISLATIVE DEPARTMENT.

SECTION II. No minister or preacher of the gospel, or of any religious creed or denomination, and no person holding any civil office of profit or trust under this State, except justices of the peace, shall be eligible as senator or delegate.

Religious
disability.

MASSACHUSETTS.

Ratified 1780.

A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE COMMONWEALTH OF MASSACHUSETTS.

ARTICLE 2. It is the right as well as the duty of all men in society, publicly and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshiping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession or sentiments, provided he doth not disturb the public peace, or obstruct others in their religious worship.

Religious
liberty.

Preamble.

ARTICLE 3. As the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion, and morality, and as these cannot be generally diffused through a community but by the institution of the public worship of God and of public instructions in piety, religion, and morality; *Therefore*, to promote their happiness and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their Legislature with power to authorize and require, and the Legislature shall, from time to time, authorize and require the several towns, parishes, precincts, and other bodies politic or religious societies to make suitable provision, at their own expense, for the institution of the public worship of God, and for the support and maintenance of public Protestant teachers of piety, religion, and morality in all cases where such provision shall not be made voluntarily.

Establishment of state religion.

Compulsory attendance at church.

And the people of this commonwealth have also a right to, and do, invest their Legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

Republican state-churchism.

Provided, notwithstanding, that the several towns, parishes, precincts, and other bodies politic, or religious societies, shall at all times have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

Semi-liberal provisions.

And all moneys paid by the subject to the support of public worship and of the public teachers aforesaid shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise it may be paid toward the support of the teacher or teachers of the parish or precinct in which the said moneys are raised.

Sectarian preference prohibited.

And every denomination of Christians, demeaning themselves peaceably and as good subjects of the commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.

CHAPTER VI.—OATHS AND SUBSCRIPTIONS—INCOMPATIBILITY OF AND EXCLUSION FROM OFFICES—PECUNIARY QUALIFICATIONS.

ARTICLE 1. Any person chosen governor, lieutenant-governor, councillor, senator, or representative, and accepting the trust, shall, before he proceed to execute the duties of his place or office, make and subscribe the following declaration; viz :

Religious test prescribed.

“I, A B, do declare that I believe the Christian religion, and have a firm persuasion of its truth; and that I am seized and possessed, in my own right, of the property required by the Constitution, as one qualification for the office or place to which I am elected.”

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AMENDMENTS.

ARTICLE 6. Instead of the oath of allegiance prescribed by the Constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of this commonwealth, before he shall enter on the duties of his office ; to wit :

“I, A B, do solemnly swear that I will bear true faith and allegiance to the commonwealth of Massachusetts, and will support the Constitution thereof : So help me God.”

ARTICLE II. Instead of the third article of the Bill of Rights, the following modification and amendment thereof is substituted :

As the public worship of God, and the instructions in piety, religion, and morality, promote the happiness and prosperity of a people, and the security of a republican government ; *Therefore*, the several religious societies of this commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses ; and all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of said society a written notice declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract which may be thereafter made or entered into by such society ; and all religious sects and denominations, demeaning themselves peaceably and as good citizens of the commonwealth, shall be equally under the protection of the law ; and no subordination of any one sect or denomination to another shall ever be established by law.

Religious liberty.

Sectarian preference prohibited.

MICHIGAN.

Ratified 1850.

ARTICLE IV.—LEGISLATIVE DEPARTMENT.

SECTION 39. The Legislature shall pass no law to prevent any person from worshipping Almighty God according to the dictates of his own conscience, or to compel any person to attend, erect, or support any place of religious worship, or to pay tithes, taxes, or other rates for the support of any minister of the gospel or teacher of religion.

Religious liberty.

SECTION 40. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary, nor shall property belonging to the State be appropriated for any such purposes.

Public funds not to be used for sectarian purposes.

SECTION 41. The Legislature shall not diminish or enlarge the civil or political rights, privileges, and capacities of any person on account of his opinion or belief concerning matters of religion.

Religious preference prohibited.

ARTICLE VI.—JUDICIAL DEPARTMENT.

SECTION 34. No person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief.

Ratified 1857.

MINNESOTA.

ARTICLE I.—BILL OF RIGHTS.

Religious
liberty.

SECTION 16. The enumeration of rights in this Constitution shall not be construed to deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect, or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent, nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State, nor shall any money be drawn from the treasury for the benefit of any religious societies, or religious or theological seminaries.

Religious
tests pro-
hibited.

SECTION 17. No religious test or amount of property shall ever be required as a qualification for any office of public trust under the State. No religious test or amount of property shall ever be required as a qualification of any voter at any election in this State; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion.

Ratified
Dec. 1, 1868.

MISSISSIPPI.

ARTICLE I.—BILL OF RIGHTS.

Religious
liberty.

SECTION 23. No religious test as a qualification for office shall ever be required, and no preference shall ever be given by law to any religious sect or mode of worship, but the free enjoyment of all religious sentiments and the different modes of worship shall ever be held sacred; *Provided*, the rights hereby secured shall not be construed to justify acts of licentiousness injurious to morals, or dangerous to the peace and safety of the State.

ARTICLE VIII.—SCHOOL FUNDS, EDUCATION, AND SCIENCE.

SECTION 9. No religious sect or sects shall ever control any part of the school or university funds of this State.

ARTICLE XII.—GENERAL PROVISIONS.

Religious
disqualifica-
tion.

SECTION 3. No person who denies the existence of a Supreme Being shall hold any office in this State.

MISSOURI.

Ratified
Oct. 30, 1875.

ARTICLE II.—BILL OF RIGHTS.

SECTION 5. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience ; that no person can, on account of his religious opinions, be rendered ineligible to any office of trust or profit under this State, nor be disqualified from testifying, or from serving as a juror ; that no human authority can control or interfere with the rights of conscience ; that no person ought, by any law, to be molested in his person or estate on account of his religious persuasion or profession ; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace, or safety of this State, or with the rights of others.

Religious
liberty.

SECTION 6. That no person can be compelled to erect, support, or attend any place or system of worship, or to maintain or support any priest, minister, preacher, or teacher of any sect, church, creed, or denomination of religion ; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same.

SECTION 7. That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or denomination of religion, or in aid of any priest, preacher, minister, or teacher thereof as such, and that no preference shall be given to, nor any discrimination made against, any church, sect, or creed of religion, or any form of religious faith or worship.

Public funds
not to be used
for sectarian
purposes.

SECTION 8. That no religious corporation can be established in this State, except such as may be created under a general law for the purpose only of holding the title to such real estate as may be prescribed by law for church edifices, parsonages, and cemeteries.

ARTICLE XI.—EDUCATION.

SECTION 11. Neither the General Assembly, nor any county, city, town, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, anything in aid of any religious creed, church, or sectarian purpose ; or to help to support or sustain any private or public school, academy, seminary, college, university, or other institution of learning, controlled by any religious creed, church, or sectarian denomination whatever ; nor shall any grant or donation of personal property or real estate ever be made by the State, or any county, city, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever.¹

Public funds
not to be used
for sectarian
purposes.

¹The American principle of absolute separation of the state from religion requires the state to carry out these provisions to the letter. If all men are equal,—which is a self-evident truth,—the Christian has no right whatever to the use of public funds or to the services of any one hired by public money, either to have the Bible read in the public schools, or to maintain chaplaincies in the army or legislatures.

Separation
of state and
religion.

Ratified 1889

MONTANA.

ARTICLE III.—A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA.

Religious liberty.

SECTION 4. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed, and no person shall be denied any civil or political right or privilege on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, by bigamous or polygamous marriage, or otherwise, or justify practices inconsistent with the good order, peace, or safety of the State, or opposed to the civil authority thereof, or of the United States. No person shall be required to attend any place of worship or support any ministry, religious sect, or denomination, against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

ARTICLE XI.—EDUCATION.

Public funds not to be used for sectarian purposes.

SECTION 8. Neither the Legislative Assembly, nor any county, city, town, or school district, or other public corporations, shall ever make, directly or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect, or denomination whatever.

Ratified Oct. 12, 1875.

NEBRASKA.

ARTICLE I.—BILL OF RIGHTS.

Religious liberty.

SECTION 4. All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No person shall be compelled to attend, erect, or support any place of worship against his consent, and no preference shall be given by law to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the Legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

Religious tests prohibited.

ARTICLE VIII.—EDUCATION.

SECTION 11. No sectarian instruction shall be allowed in any school or institution supported in whole or in part by the public funds set apart

for educational purposes; nor shall the State accept any grant, conveyance, or bequest of money, lands, or other property, to be used for sectarian purposes.

NEVADA.

Ratified 1864.

ARTICLE I.—DECLARATION OF RIGHTS.

SECTION 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State.

Religious liberty.

ARTICLE XI.—EDUCATION.

SECTION 9. No sectarian instruction shall be imparted or tolerated in any school or university that may be established under this Constitution.

Sectarian instruction prohibited.

NEW HAMPSHIRE.

Ratified 1792.

PART I.—BILL OF RIGHTS.

ARTICLE 4. Among the natural rights, some are in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the *rights of conscience*.

Rights of conscience.

ARTICLE 5. Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience and reason; and no person shall be hurt, molested, or restrained in his person, liberty, or estate for worshipping God in the manner most agreeable to the dictates of his own conscience, or for his religious profession, sentiments, or persuasion, provided he doth not disturb the public peace or disturb others in their religious worship.

Religious liberty.

ARTICLE 6. As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay in the hearts of men the strongest obligations to due subjection; and as a knowledge of these is most likely to be propagated through a society by the institution of the public worship of the Deity, and of public instruction in morality and religion;¹ *Therefore*, to promote those important purposes, the people of this State have a right to empower, and do hereby fully empower, the Legislature to authorize, from time to time, the several towns, parishes, bodies corporate, or religious societies

Establishment of state religion.

¹In this provision can be plainly seen the direct connection that religious exercises in the public schools, in the way of reading King James's Version of the Bible (the Protestant version) and opening the schools with prayer, etc., have with state-church laws of the last century. Senator Blair's amendment providing for the teaching of the Christian religion in the public schools is simply a step backward a hundred years.

Protestant
religion
established.

within this State, to make adequate provisions; at their own expense, for the support and maintenance of public Protestant teachers¹ of piety, religion, and morality.

Republican
state-church-
ism.

Provided, notwithstanding, that the several towns, parishes, bodies corporate, or religious societies, shall at all times have the exclusive right of electing their own public teachers, and of contracting with them for their support and maintenance. And no person, or any one particular religious sect or denomination, shall ever be compelled to pay toward the support of the teacher or teachers of another persuasion, sect, or denomination.

Sectarian
preference
prohibited.

And every denomination of Christians, demeaning themselves quietly and as good subjects of the State, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.

And nothing herein shall be understood to affect any former contracts made for the support of the ministry; but all such contracts shall remain and be in the same state as if this Constitution had not been made.

Ratified
Aug. 13, 1844.

NEW JERSEY.

ARTICLE I. — RIGHTS AND PRIVILEGES.

Religious
liberty.

Three. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform.

Religious
preferences
prohibited.

Four. There shall be no establishment of one religious sect in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right merely on account of his religious principles.

Ratified
Nov., 1846.

NEW YORK.

ARTICLE I.

Religious
liberty.

SECTION 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

¹ In this connection read Madison's "Memorial and Remonstrance," *ante* page 27.

NORTH CAROLINA.

Ratified 1876.

ARTICLE I.—DECLARATION OF RIGHTS.

SECTION 26. All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority should, in any case whatever, control or interfere with the rights of conscience.

Religious liberty.

ARTICLE VI.—SUFFRAGE AND ELIGIBILITY TO OFFICE.

SECTION 5. The following classes of persons shall be disqualified for office: *First*, All persons who shall deny the being of Almighty God; *Second*, All persons who shall have been convicted of treason, perjury, or of any other infamous crime, since becoming citizens of the United States, or of corruption or malpractice in office, unless such person shall have been legally restored to the rights of citizenship.¹

Religious disqualification.

ARTICLE IX.—EDUCATION.

SECTION 1. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

¹This article, by *reductio ad absurdum*, makes the injustice of disqualifying atheists from holding public trusts peculiarly manifest. "Persons who shall have been convicted of treason, perjury, or of any other infamous crime" can hold office when "legally restored to the rights of citizenship;" but an atheist, never—unless he compromises his manhood by becoming a hypocrite and perjurer by swearing that he believes in God (when he does not), and then he is rewarded by having all disqualifications removed! This contemptible way of gaining accessions to Christianity from the servile classes has ever been a characteristic of state religion;—in fact, is a necessary consequence of its existence. Gibbon, in relating how state Christianity first obtained the ascendancy, says:

Absurdity of disqualifying atheists.

"The exact balance of the two religions [paganism and Christianity] continued but a moment; and the piercing eye of ambition and avarice soon discovered that the profession of Christianity might contribute to the interest of the present as well as of a future life. The hopes of wealth and honors, the example of an emperor, his exhortations, his irresistible smiles, diffused conviction among the venal and obsequious crowds which usually fill the apartments of a palace. The cities which signalized a forward zeal by the voluntary destruction of their temples, were distinguished by municipal privileges, and rewarded with popular donatives; and the new capital of the East gloried in the singular advantage that Constantinople was never profaned by the worship of idols. As the lower ranks of society are governed by imitation, the conversion of those who possessed any eminence of birth, of power, or of riches, was soon followed by dependent multitudes. The salvation of the common people was purchased at an easy rate, if it be true that, in one year, twelve thousand men were baptized at Rome, besides a proportionable number of women and children, and that a white garment, with twenty pieces of gold, had been promised by the emperor to every convert."

Illustration of conferring political rewards for embracing Christianity.

The atheist, however, who will not compromise principle for any reward, not even the highest office in the land, is rewarded by being placed politically beneath the level of the basest felons! No wonder that John Adams wrote to Jefferson that "we think ourselves possessed, or at least we boast that we are so, of liberty of conscience on all

Treatment of atheists of principle.

Ratified 1889.

NORTH DAKOTA.

ARTICLE I.—DECLARATION OF RIGHTS.

Religious liberty.

SECTION 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever guaranteed in this State, and no person shall be rendered incompetent

Adams's exclamation.

subjects, and of the right of free inquiry and private judgment in all cases," and then said, "yet how far are we from these exalted privileges in fact!"

Mr. John Stuart Mill, in discoursing on this subject, in his essay "On Liberty," writes as follows:

An apt application of scripture.

"It will be said that we do not now put to death the introducers of new opinions; we are not like our fathers who slew the prophets, we even build sepulchers to them. It is true we no longer put heretics to death; and the amount of penal infliction which modern feeling would probably tolerate, even against the most obnoxious opinions, is not sufficient to extirpate them. But let us not flatter ourselves that we are yet free

Penalties for expression of opinion.

from the stain even of legal persecution. Penalties for opinion, or at least for its expression, still exist by law; and their enforcement is not, even in these times, so unexampled as to make it at all incredible that they may some day be revived in full force.

American cases.

In the year 1857, at the summer assizes of the county of Cornwall, an unfortunate man said to be of unexceptionable conduct in all relations of life, was sentenced to twenty-one months' imprisonment for uttering, and writing on a gate, some offensive words concerning Christianity. [A number of instances also might be cited in the United States, notably, *People v. Ruggles*, 8 Johnson (New York), 290; *State v. Chandler*, 2 Harrington (Delaware), 553; *Updegraph v. Commonwealth*, 11 Sergeant and Rawle (Pennsylvania), 394; and *Commonwealth v. Kneeland*, 20 Pickering (Massachusetts), 206.] Within a month of the same time, at the Old Bailey, two persons, on two separate occasions, were rejected as jurymen, and one of them grossly insulted by the judge and by one of the counsel, because they honestly declared that they had no theological belief; and a third, a foreigner, for the same reason was denied justice against a thief. This refusal of redress took place in virtue of the legal doctrine that no person can be allowed to give evidence in a court of justice, who does not profess belief in a God (any god is sufficient) and in a future state; which is equivalent to declaring such persons to be outlaws, excluded from the protection of the tribunals; who may not only be robbed or assaulted with impunity, if no one but themselves, or persons of similar opinions, be present, but any one else may be robbed or assaulted with impunity, if the proof of the fact depends on their evidence. The assumption on which this is grounded, is that the oath is worthless, of a person who does not believe in a future state; a proposition which betokens much ignorance of history in those who assent to it (since it is historically true that a large proportion of infidels in all ages have been persons of distinguished integrity and honor); and would be maintained by no one who had the smallest conception of how many of the persons in greatest repute with the world, both for virtues and attainments, are well known, at least to their intimates, to be unbelievers. The rule, besides, is suicidal, and cuts away its own foundation. Under pretense that atheists must be liars, it admits the testimony of all atheists who are willing to lie, and rejects only those who brave the obliquy of publicly confessing a detested creed rather than affirm a falsehood. A rule thus self-convicted of absurdity so far as regards its professed purpose, can be kept in force only as a badge of hatred, a relic of persecution—a persecution, too, having the peculiarity that the qualification for undergoing it, is the being clearly proved not to deserve it. The rule and the theory it implies, are hardly less insulting to believers than to infidels. For if he who does not believe in a future state necessarily lies, it follows that they who do believe are only prevented from lying, if prevented they are, by the fear of hell. We will not do the authors and abettors of the rule the injury of supposing that the conception which they have formed of Christian virtue is drawn from their own consciousness.

Characteristic of infidels.

The rule, besides, is suicidal, and cuts away its own foundation. Under pretense that atheists must be liars, it admits the testimony of all atheists who are willing to lie, and rejects only those who brave the obliquy of publicly confessing a detested creed rather than affirm a falsehood. A rule thus self-convicted of absurdity so far as regards its professed purpose, can be kept in force only as a badge of hatred, a relic of persecution—a persecution, too, having the peculiarity that the qualification for undergoing it, is the being clearly proved not to deserve it. The rule and the theory it implies, are hardly less insulting to believers than to infidels. For if he who does not believe in a future state necessarily lies, it follows that they who do believe are only prevented from lying, if prevented they are, by the fear of hell. We will not do the authors and abettors of the rule the injury of supposing that the conception which they have formed of Christian virtue is drawn from their own consciousness.

A contradictory doctrine.

The rule, besides, is suicidal, and cuts away its own foundation. Under pretense that atheists must be liars, it admits the testimony of all atheists who are willing to lie, and rejects only those who brave the obliquy of publicly confessing a detested creed rather than affirm a falsehood. A rule thus self-convicted of absurdity so far as regards its professed purpose, can be kept in force only as a badge of hatred, a relic of persecution—a persecution, too, having the peculiarity that the qualification for undergoing it, is the being clearly proved not to deserve it. The rule and the theory it implies, are hardly less insulting to believers than to infidels. For if he who does not believe in a future state necessarily lies, it follows that they who do believe are only prevented from lying, if prevented they are, by the fear of hell. We will not do the authors and abettors of the rule the injury of supposing that the conception which they have formed of Christian virtue is drawn from their own consciousness.

A badge of hatred.

An insulting rule.

The rule, besides, is suicidal, and cuts away its own foundation. Under pretense that atheists must be liars, it admits the testimony of all atheists who are willing to lie, and rejects only those who brave the obliquy of publicly confessing a detested creed rather than affirm a falsehood. A rule thus self-convicted of absurdity so far as regards its professed purpose, can be kept in force only as a badge of hatred, a relic of persecution—a persecution, too, having the peculiarity that the qualification for undergoing it, is the being clearly proved not to deserve it. The rule and the theory it implies, are hardly less insulting to believers than to infidels. For if he who does not believe in a future state necessarily lies, it follows that they who do believe are only prevented from lying, if prevented they are, by the fear of hell. We will not do the authors and abettors of the rule the injury of supposing that the conception which they have formed of Christian virtue is drawn from their own consciousness.

to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Religious liberty.

SECTION 24. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate.

Rights to be enforced.

ARTICLE VIII.—EDUCATION.

SECTION 152. All colleges, universities, and other educational institutions, for the support of which lands have been granted to this State, or which are supported by a public tax, shall remain under the absolute and exclusive control of the State. No money raised for the support of the public schools of the State shall be appropriated to or used for the support of any sectarian school.

School funds not to be used for sectarian purposes.

ARTICLE XVI.—COMPACT WITH THE UNITED STATES.

The following article shall be irrevocable without the consent of the United States and the people of this State :

SECTION 203. *First*, perfect toleration of religious sentiment shall be secured, and no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship.

Perfect toleration secured.

OHIO.

Ratified 1851.

ARTICLE I.—BILL OF RIGHTS.

SECTION 7. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent, and no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted. No religious test

Religious rights.

“These, indeed, are but rags and remnants of persecution, and may be thought to be not so much an indication of the wish to persecute, as an example of that very frequent infirmity of English minds, which makes them take a preposterous pleasure in the assertion of a bad principle, when they are no longer bad enough to desire to carry it really into practice. But unhappily there is no security in the state of the public mind, that the suspension of worse forms of legal persecution, which has lasted for about the space of a generation, will continue. In this age the quiet surface of routine is as often ruffled by attempts to resuscitate past evils, as to introduce new benefits. What is boasted of at the present time as the revival of religion, is always, in narrow and uncultivated minds, at least as much the revival of bigotry; and where there is the strong, permanent leaven of intolerance in the feelings of a people, which at all times abides in the middle classes of this country, it needs but little to provoke them into actively persecuting those whom they have never ceased to think proper objects of persecution.”

Relics of persecution.

Present dangers.

Modern bigotry.

Religious liberty must be absolute; for the same logic that would give the state the power to require belief in God, would give it the power to require belief in any other doctrine to which the majority might take a fancy.

Religious liberty.

Religious
tests pro-
hibited.

shall be required as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief ; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

ARTICLE VI.—EDUCATION.

Funds held
in trust.

SECTION 1. The principal of all funds arising from the sale or other disposition of lands or other property, granted or intrusted to this State for educational and religious purposes, shall forever be preserved inviolate and undiminished ; and the income arising therefrom shall be faithfully applied to the specific objects of the original grants or appropriations.

School funds
not to be
under secta-
rian control.

SECTION 2. The General Assembly shall make such provisions, by taxation or otherwise, as, with the interest arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State ; but no religious or other sect or sects shall ever have any exclusive right to or control of any part of the school funds of this State.

Ratified
Nov. 9, 1857.

OREGON.

ARTICLE I.—BILL OF RIGHTS.

Religious
liberty.

SECTION 2. All men shall be secured in their natural right to worship Almighty God according to the dictates of their own consciences.

SECTION 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

Religious
tests pro-
hibited.

SECTION 4. No religious test shall be required as a qualification for any office of trust or profit.

Public funds
not to be used
for sectarian
uses.

SECTION 5. No money shall be drawn from the treasury for the benefit of any religious or theological institution, nor shall any money be appropriated for the payment of any religious service, in either house of the Legislative Assembly.

SECTION 6. No person shall be rendered incompetent as a witness or juror in consequence of his opinions on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

Administra-
tion of oaths.

SECTION 7. The mode of administering an oath or affirmation shall be such as may be most consistent with, and binding upon, the conscience of the person to whom such oath or affirmation may be administered.

Class legis-
lation for-
bidden.

SECTION 21. No law shall be passed granting to any citizen or class of citizens privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

PENNSYLVANIA.

Ratified
Dec. 16, 1873.

ARTICLE I. — DECLARATION OF RIGHTS.

SECTION 3. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences ; no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent ; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.

Religious
liberty.

SECTION 4. No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this commonwealth.

Religious
disability.

ARTICLE X. — EDUCATION.

SECTION 2. No money raised for the support of the public schools of the commonwealth shall be appropriated to or used for the support of any sectarian school.

School funds
not to go to
any sectarian
school.

RHODE ISLAND.

Ratified
Nov. 23, 1842.

ARTICLE I. — DECLARATION OF CERTAIN CONSTITUTIONAL RIGHTS AND PRINCIPLES.

In order effectually to secure the religious and political freedom established by our venerated ancestors, and to preserve the same for our posterity, we do declare that the essential and unquestionable rights and principles hereinafter mentioned shall be established, maintained, and preserved, and shall be of paramount obligation in all legislative, judicial, and executive proceedings.

Rights to
be enforced.

SECTION 3. *Whereas*, Almighty God hath created the mind free, and all attempts to influence it by temporal punishment, or burdens, or by civil incapacitations, tend to beget habits of hypocrisy and meanness ; and, *whereas*, a principal object of our venerated ancestors, in their migration to this country and their settlement of this State, was, as they expressed it, to hold forth a lively experiment that a flourishing civil state may stand and be best maintained with full liberty in religious concerns ; *We therefore declare*, that no man shall be compelled to frequent or to support any religious worship, place, or ministry whatever, except in fulfilment of his own voluntary contract ; nor enforced, restrained, molested, or burdened in his body or goods ; nor disqualified from holding any office ; nor otherwise suffer on account of his religious belief ; and that every man shall be free to worship God according to the dictates of his own conscience, and to profess, and by argument to maintain, his opinion in matters of religion ; and that the same shall in no wise diminish, enlarge, or affect his civil capacity.

Preamble.

Religious
liberty.

Ratified
Apr. 16, 1868.

SOUTH CAROLINA.

ARTICLE I. — DECLARATION OF RIGHTS.

Religious
liberty.

SECTION 9. No person shall be deprived of the right to worship God according to the dictates of his own conscience ; *Provided*, that the liberty of conscience hereby declared shall not justify practices inconsistent with the peace and moral safety of society.

SECTION 10. No form of religion shall be established by law ; but it shall be the duty of the General Assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of worship.

Religious
tests pro-
hibited.

SECTION 12. No person shall be disqualified as a witness, or be prevented from acquiring, holding, and transmitting property, or be hindered in acquiring education, or be liable to any other punishment for any offense, or be subjected in law to any other restraints or disqualifications, in regard to any personal rights than such as are laid upon others under like circumstances.

ARTICLE XIV.— MISCELLANEOUS.

Religious
disqualifica-
tion.

SECTION 6. No person who denies the existence of the Supreme Being shall hold any office under this Constitution.

Ratified 1889.

SOUTH DAKOTA.

ARTICLE VI.— BILL OF RIGHTS.

Religious
liberty.

SECTION 3. The right to worship God according to the dictates of conscience shall never be infringed. No person shall be denied any civil or political right, privilege, or position on account of his religious opinions ; but the liberty of conscience hereby secured shall not be so construed as to excuse licentiousness, the invasion of the rights of others, or justify practices inconsistent with the peace or safety of the State.

Public funds
not to be used
for sectarian
purposes.

No person shall be compelled to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious establishment or mode of worship. No money or property of the State shall be given or appropriated for the benefit of any sectarian or religious society or institution.

Ratified
Mar. 26, 1870.

TENNESSEE.

ARTICLE I.— DECLARATION OF RIGHTS.

Religious
liberty.

SECTION 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience ; that no man can, of right, be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent ;

that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious establishment or mode of worship. Religious liberty.

SECTION 4. That no political or religious test, other than an oath to support the Constitution of the United States and of this State, shall ever be required as a qualification to any office or public trust under this State. Religious tests prohibited.

SECTION 6. That the right of trial by jury shall remain inviolate, and no religious or political test shall ever be required as a qualification for jurors.

ARTICLE IX.—DISQUALIFICATIONS.

SECTION 1. *Whereas*, Ministers of the gospel are, by their profession, dedicated to God and the care of souls, and ought not to be diverted from the great duties of their functions; *Therefore*, no minister of the gospel, or priest of any denomination whatever, shall be eligible to a seat in either house of the Legislature. Religious disqualification.

SECTION 2. No person who denies the being of God, or a future state of rewards and punishments, shall hold any office in the civil department of this State.

ARTICLE XI.—MISCELLANEOUS PROVISIONS.

SECTION 15. No person shall in time of peace be required to perform any service to the public on any day set apart by his religion as a day of rest. Religious equality.

TEXAS.

Ratified
Feb. 17, 1876.

ARTICLE I.—BILL OF RIGHTS.

SECTION 6. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship. Religious liberty.

SECTION 7. No money shall be appropriated or drawn from the treasury for the benefit of any sect or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes. Public funds not to be used for sectarian purposes.

ARTICLE VII.—EDUCATION—THE PUBLIC FREE SCHOOLS.

SECTION 5. . . . And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same or any part thereof ever be appropriated to or used for the support of any sectarian school. . . . School funds not to be used for sectarian purposes.

Adopted
Nov. 2, 1796.

VERMONT.

CHAPTER I.—DECLARATION OF RIGHTS.

Religious
liberty.

ARTICLE 3. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God ; and that no man ought to, or of right can, be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of his conscience ; nor can any man be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship ; and that no authority can or ought to be vested in or assumed by any power whatever, that shall in any case interfere with or in any manner control the rights of conscience in the free exercise of religious worship. Nevertheless, every sect or denomination of Christians ought to observe the Sabbath, or Lord's day,¹ and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God.

Ratified
July 6, 1869.

VIRGINIA.

ARTICLE I.—BILL OF RIGHTS.

Religious
liberty.

SECTION 18. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence : and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience ; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.

Rights to be
enforced.

The declaration of the political rights and privileges of the inhabitants of this State is hereby declared to be a part of the Constitution of this commonwealth, and shall not be violated on any pretense whatever.

¹As well might the state say that "every sect or denomination of Christians ought to be baptized, partake of the Lord's supper, offer prayer three times a day, and read their Bibles regularly." It is true that it is the duty of the Christian to observe the precepts inculcated in the word of God ; but it is not the sphere of the state either to prescribe or enforce such observance. The state is just as much out of its place in dictating to the church as the church is in dictating to the state. The state has rightly nothing to do with matters of doctrine and religious observances. A Unitarian can be just as good a citizen as a Trinitarian ; and a Sabbatarian or Mahometan can be just as good a citizen as a Sunday-keeper. The business of the state is not to inquire into what individuals believe, but to protect all, without regard to what they believe.

Absurdity
of state-
churchism.

The absurdity that the state, which has ever been composed, more or less, of notoriously wicked men, should prescribe the religious doctrines and duties of Christians, or of any one else, has been apparent to the American people, and consequently they have established the principle in this country of entire separation of the state from the church. The reason, Bancroft says, was "not from indifference, but that the infinite spirit of eternal truth might move in its freedom, and purity, and power." James Madison, too, said, "We are teaching the world the great truth . . . that religion flourishes in greater purity without, than with, the aid of government."

ARTICLE V.—LEGISLATIVE DEPARTMENT.

SECTION 14. . . . No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall any man be forced, restrained, or molested, or burdened in his body or goods, or otherwise suffer on account of his religious opinions or belief, but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise affect, diminish, or enlarge their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this commonwealth, to levy on themselves or others any tax for the erection or repair of any house of public worship, or for the support of any church or ministry, but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

Religious liberty.

Religious preferences prohibited.

SECTION 17. The General Assembly shall not grant a charter of incorporation to any church or religious denomination, but may secure the title to church property to an extent to be limited by law.

WEST VIRGINIA.

Ratified
Aug. 22, 1872.

ARTICLE III.—BILL OF RIGHTS.

SECTION 11. Political tests, requiring persons, as a prerequisite to the enjoyment of their civil and political rights, to purge themselves by their own oath of past alleged offenses, are repugnant to the principles of free government, and are cruel and oppressive. No religious or political test oath shall be required as a prerequisite or qualification to vote, serve as a juror, sue, plead, appeal, or pursue any profession or employment; nor shall any person be deprived by law of any right or privilege because of any act done prior to the passage of such law.

Political and religious tests prohibited.

SECTION 15. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever; nor shall any man be enforced, restrained, molested, or burdened in his body or goods, or otherwise suffer, on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion; and the same shall in no wise affect, diminish, or enlarge their civil capacities; and the Legislature shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves or others any tax for the erection or repair of any house for public worship, or for the support of any church or ministry, but it shall be left free for every person to select his religious instructor, and to make for his support such private contract as he shall please.

Religious liberty.

Ratified 1889.

WASHINGTON.

ARTICLE I.—DECLARATION OF RIGHTS.

Administration of oaths.

SECTION 6. The mode of administering an oath, or affirmation, shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered.

Religious liberty.

SECTION 11. Absolute freedom of conscience in all matters of religious sentiment, belief, and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property, on account of religion ; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State. No public money or property shall be appropriated for, or applied to, religious worship, exercises, or instruction, or the support of any religious establishment. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

ARTICLE XXVI.—COMPACT WITH THE UNITED STATES.

The following ordinance shall be irrevocable without the consent of the United States and the people of this State :

First, That perfect toleration of religious sentiment shall be secured, and that no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship.

Fourth, Provision shall be made for the establishment and maintenance of systems of public schools free from sectarian control, which shall be open to all the children of said State.

Ratified
March, 1848.

WISCONSIN.

ARTICLE I.—DECLARATION OF RIGHTS.

Religious liberty.

SECTION 18. The right of every man to worship Almighty God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent. Nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or mode of worship. Nor shall any money be drawn from the treasury for the benefit of religious societies or religious or theological seminaries.

Religious tests prohibited.

SECTION 19. No religious tests shall ever be required as a qualification for any office of public trust under the State, and no person shall be rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion.

ARTICLE X.—EDUCATION.

SECTION 3. The Legislature shall provide by law for the establishment of district schools, . . . and no sectarian instruction shall be allowed therein. Sectarian instruction prohibited.

SECTION 6. Provision shall be made by law for the establishment of a State university, . . . and no sectarian instruction shall be allowed in such university.

WYOMING.

ARTICLE I.—DECLARATION OF RIGHTS.

SECTION 7. Absolute, arbitrary power over the lives, liberty, and property of freemen exists nowhere in a republic, not even in the largest majority. Recognition of rights.

SECTION 18. The free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever guaranteed in this State, and no person shall be rendered incompetent to hold any office of trust or profit, or to serve as a witness or juror, because of his opinion on any matter of religious belief whatever; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the State. Religious liberty.

SECTION 19. No money of the State shall ever be given or appropriated to any sectarian or religious society or institution.

ARTICLE VI.—SUFFRAGE.

SECTION 1. The rights of citizens of the State of Wyoming to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall equally enjoy all civil, political, and religious rights and privileges. Equality of rights.

ARTICLE VII.—EDUCATION.

SECTION 12. No sectarian instruction, qualifications, or tests shall be imparted, exacted, applied, or in any manner tolerated in the schools of any grade or character controlled by the State, nor shall attendance be required at any religious service therein, nor shall any sectarian tenets or doctrines be taught or favored in any public school or institution that may be established under this Constitution. Schools to be free from sectarianism.

NEW MEXICO.

Adopted
Sept., 1890.

ARTICLE II.—BILL OF RIGHTS.

SECTION 14. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, is hereby guaranteed, and no person shall be rendered incompetent to be a witness or a juror on account of his opinions on matters of religious belief, but the liberty of conscience hereby secured shall not excuse acts of Religious liberty.

Polygamy
prohibited.

licentiousness, or justify polygamous practices or other acts inconsistent with morality or the peace or safety of the State, nor permit any person, organization, or association, directly or indirectly, to aid or abet, counsel or advise, any person to commit bigamy or polygamy, or any other crime. Bigamy and polygamy are forever prohibited.

SECTION 26. The natural right of the people to one day of rest in every seven is hereby acknowledged.

ARTICLE IX.—EDUCATION.

Separation
of schools from
sectarian in-
struction.

SECTION 1. Provision shall be made by law for the establishment and maintenance of a uniform system of public schools, which shall be open to and sufficient for the education of all the children in the State, and shall be under the absolute control of the State, and free from sectarian or church control; and no other or different schools shall ever receive any aid or support from public funds. No sectarian tenet, creed, or church doctrine shall be taught in the public schools.

School funds
not to be used
for sectarian
purposes.

SECTION 2. . . . But no part of such [school] funds, nor of any other funds created or authorized by law for educational purposes, shall ever be applied toward the maintenance, support, or aid of any school or other institution in the management of which any religious or other sect has any part, or which is not under the absolute control of the State. The provisions of this and the last preceding section are hereby declared to be irrevocable without the consent of the United States and the people of this State.

American
principles to
be taught.

SECTION 6. Provision shall be made by law for teaching the principles of the Constitutions of the United States and of this State in the common schools. All teachers in the public schools shall be citizens of the United States, properly qualified, and persons of good moral character.

Religious
tests pro-
hibited.

SECTION 7. No religious test shall ever be required of any person as a condition of admission into any public educational institution of the State, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever; nor shall any distinction or classification of pupils be made on account of race or color.

ARTICLE XVIII.—COMPACT WITH THE UNITED STATES.

Guaranty
of religious
liberty.

SECTION 3. Perfect toleration of religious sentiment shall be secured, and no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship, nor shall any preference be given by law to any religious establishment. No religious test shall be required for any office or for any vote at any election; nor shall any person be incompetent to testify on account of his or her opinions on matters of religious belief, nor be questioned in any court touching such opinions so as to affect the weight of his or her testimony.

HISTORY OF SUNDAY LEGISLATION.

A HISTORICAL SUMMARY OF SUNDAY LEGISLATION
FROM 321 TO 1888.¹

WRITTEN BY DR. A. H. LEWIS.

The first Sunday legislation was the product of that pagan conception, so fully developed by the Romans, which made religion a department of the state. This was diametrically opposed to the genius of New Testament Christianity. It did not find favor in the church until Christianity had been deeply corrupted through the influence of Gnosticism and kindred pagan errors. The Emperor Constantine, while still a heathen — if indeed he was ever otherwise — issued the first Sunday edict by virtue of his power as Pontifex Maximus in all matters of religion, especially in the appointment of sacred days. This law was pagan in every particular.

Nature of
first Sunday
legislation.

Sunday legislation between the time of Constantine and the fall of the empire, was a combination of the pagan, Christian, and Jewish cults. Many other holidays — mostly pagan festivals baptized with new names and slightly modified — were associated, in the same laws, with the Sunday.

Christianiza-
tion of pagan
holidays.

During the middle ages, Sunday legislation took on a more Judaistic type, under the plea of analogy, whereby civil authorities claimed the right to legislate in religious matters, after the manner of the Jewish theocracy.

Mediæval
influence.

The continental Reformation made little change in the civil legislation concerning Sunday. The English Reformation introduced a new theory, and developed a distinct type of legislation. Here we meet, for the first time, the doctrine of the transfer of the fourth commandment to the first day of the week, and the consequent legislation growing out of that theory. The reader will find the laws of that period to be extended theological treatises, as well as civil enactments. The Sunday laws of the United States are the direct outgrowth of the Puritan legislation, notably, of the Cromwellian period. These have been much modified since the colonial times, and the latest tendency, in the few

Puritanic
theory and
legislation.

¹This interesting summary of the history of Sunday laws has an additional interest as an introduction to the Sunday laws of the United States following. It is from the preface and chapters 1, 2, 4, and 5 of Dr. A. H. Lewis's "Critical History of Sunday Legislation from 321 to 1888 A. D." (New York, D. Appleton & Company, 1888), a valuable addition to our literature upon the Sunday problem. The act of the twenty-ninth year of Charles II, is inserted to show the direct connection that our Sunday laws have with the church and state laws of England, and through them with the ecclesiastical domination of the dark ages. The connection is direct, and the evidence as to the religious nature of Sunday laws is conclusive.

Interesting
historical sum-
mary of
Sunday laws.

Modern
policy.

cases which come to direct trial under these laws, is to set forth laws of a wholly different character, through the decisions of the courts.

Modern
claims.

In the Sunday legislation of the Roman Empire the religious element was subordinate to the civil. In the middle ages, under Cromwell, and during our colonial period, the church was practically supreme. Some now claim that Sunday legislation is not based on religious grounds. This claim is contradicted by the facts of all the centuries.

Origin of all
Sunday laws.

Every Sunday law sprang from a religious sentiment. Under the pagan conception, the day was to be "venerated" as a religious duty owed to the god of the sun. As the resurrection-festival idea was gradually combined with the pagan conception, religious regard for the day was also demanded in honor of Christ's resurrection. In the middle-age period, sacredness was claimed for Sunday because the Sabbath had been sacred under the legislation of the Jewish theocracy. Sunday was held supremely sacred by the Puritans, under the plea that the obligations imposed by the fourth commandment were transferred to it. There is no meaning in the statutes prohibiting "worldly labor," and permitting "works of necessity and mercy," except from a religious standpoint. There can be no "worldly business," if it be not in contrast with religious obligation. Every prohibition which appears in Sunday legislation is based upon the idea that it is wrong to do on Sunday the things prohibited. Whatever theories men may invent for the observance of Sunday on non-religious grounds, and whatever value any of these may have from a scientific standpoint, we do not here discuss; but the fact remains that such considerations have never been made the basis of legislation. To say that the present Sunday laws do not deal with the day as a religious institution, is to deny every fact in the history of such legislation. The claim is a shallow subterfuge. . . .

Puritanic
ideas of
Sunday.

Nature of
Sunday laws.

Scientific
grounds not
the basis of
Sunday laws.

A shallow
subterfuge.
Evolution
of laws.

The original character of laws and institutions is not easily lost. History is a process of evolution, whereby original germs, good or bad, are developed. In the process of development modifications take place, and methods of application change; but the properties of the original germ continue to appear. Neither legislation nor the influence of the church have been able to prevent the development of holidayism and its associate evils in connection with Sunday. . . .

Sunday
legislation
pagan.

The preceding chapter [chapter 1] shows that there was nothing new in the legislation by Constantine concerning the Sunday. It was as much a part of the pagan cultus, as the similar legislation concerning other days which had preceded it. Such legislation could not spring from apostolic Christianity. Every element of that Christianity forbade such interference by the state. The pagan character of this first Sunday legislation is clearly shown, not only by the facts above stated, but by the nature and spirit of the law itself. Sunday is mentioned only by its pagan name, "venerable day of the sun." Nothing is said of any relation to Christianity. No trace of the resurrection-festival idea appears. No reference is made to the fourth commandment or the Sabbath, or

Christianity
opposed to it.

Evidence
of its pagan
character.

anything connected with it. The law was made for all the empire. It applied to every subject alike. The fact that on the day following the publication of the edict concerning the Sunday, another was issued, ordering that the haruspices¹ be consulted in case of public calamity, which was thoroughly pagan in every particular, shows the attitude of the emperor and the influences which controlled him.

Constantine's pagan-ism.

The following is the complete text of the laws just referred to. It will repay the reader for prolonged and careful study :

FIRST SUNDAY EDICT.

"Let all judges and all city people and all tradesmen rest upon the venerable day of the sun. But let those dwelling in the country freely and with full liberty attend to the culture of their fields ; since it frequently happens that no other day is so fit for the sowing of grain or the planting of vines ; hence, the favorable time should not be allowed to pass, lest the provisions of heaven be lost.

Constantine's Sunday edict.

"Given the seventh of March, Crispus and Constantine being consuls, each for the second time (321)."

"Codex Justin," lib. iii, tit. xii, l. 3.

EDICT CONCERNING HARUSPICES.

"*The August Emperor Constantine to Maximus :*

"If any part of the palace or other public works shall be struck by lightning, let the soothsayers, following old usages, inquire into the meaning of the portent, and let their written words, very carefully collected, be reported to our knowledge ; and also let the liberty of making use of this custom be accorded to others, provided they abstain from private sacrifices, which are specially prohibited.

Pagan edict by Constantine.

"Moreover, that declaration and exposition, written in respect to the amphitheater being struck by lightning, concerning which you had written to Heraclianus, the tribune, and master of offices, you may know has been reported to us.

"Dated the sixteenth, before the calends of January, at Serdica (320).

Acc. the eighth, before the Ides of March, in the consulship of Crispus II and Constantine III, Cæsars Coss. (321)."

"Codex Theo.," lib. xvi, tit. x, l. 1.

It will be difficult for those who are accustomed to consider Constantine a "Christian emperor" to understand how he could have put forth the above edicts. The facts which crowd the preceding century will fully answer this inquiry. The sun-worship cult had grown steadily

¹ The "Encyclopedia Britannica," volume xi, page 500, says : "HARUSPICES (literally, entrail-observers, *confer* Sanskrit *hila*, Greek *χορδή*), a class of soothsayers in Rome. Their art consisted especially in deducing from the appearance presented by the entrails of the slain victim the will of the gods. . . . In later times the art fell into disrepute, and the saying of Cato the censor, is well known, that he wondered one haruspex could look another in the face without laughing (Cic., *De Div.* ii, 24)."

Nature of haruspices.

Reasons for
issuing the
Sunday edict.

in the Roman Empire for a long time. In the century which preceded Constantine's time, specific efforts had been made to give it prominence over all other systems of religion. The efforts made under Heliogabalus (218-222 A. D.) marked the ripening influence of that cult, both as a power to control and an influence to degrade Roman life.¹ . . .

Origin of
Sunday
legislation.

All Sunday legislation is the product of pagan Rome. The Saxon laws were the product of the middle-age legislation of the "Holy Roman Empire." The English laws are an expansion of the Saxon, and the American are a transcript of the English. Our own laws were all inchoate in those [the Saxon laws] which are found below. . . .

Descent of
these laws.

The early Sunday laws in England were but the expansion of the Saxon laws. When compared with the Saxon laws, they show the successive links by which our Sunday laws have been developed from the original source. They are of great value, beyond their mere historic interest, in showing how the advance of civilization and of Christianity has left the original idea behind. . . .

THE SUNDAY LAW OF CHARLES II.²

The model
Sunday law.

The act of the 29th of Charles II, chapter vii, issued in 1676, was the law of the American colonies up to the time of the Revolution, and so became the basis of the American Sunday laws. It runs as follows :

Compulsory
attendance at
church.

"For the better observation and keeping holy the Lord's day, commonly called Sunday : be it enacted by the king's most excellent majesty, and by and with the advice and consent of the lords, spiritual and temporal, and of the commons in this present Parliament assembled, and by the authority of the same, that all the laws enacted and in force concerning the observation of the day, and repairing to the church thereon, be carefully put in execution ; and that all and every person and persons whatsoever shall upon every Lord's day apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion, publicly and privately ; and that no tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly labor or business or work of their *ordinary callings* upon the Lord's day, or any part thereof (works of necessity and charity only excepted), and that every person being of the

Degradation
and universal-
ity of sun-
worship.

¹ Sun-worship has ever been the most extensive and degrading of all heathen idolatry. In the "Encyclopedia Britannica," article "Baal," is the following : "As the sun-god, he [Baal] is conceived as the male principle of life and reproduction in nature, and thus in some forms of his worship is the patron of the grossest sensuality, and even of systematic prostitution." In an article in the " Old Testament Student," January, 1886, Dr. Talbot W. Chambers said that the worship of the sun is "the oldest, the most widespread, and the most enduring of all forms of idolatry known to man. The universality of this form of idolatry is something remarkable. It seems to have prevailed everywhere."

² "Johnson's Universal Cyclopedica" says : "This statute, somewhat modified by subsequent laws, is the present Sunday law of England, and lies at the basis of the Sunday laws of this country." Revised edition, volume vii, page 626, article "Sunday."

age of fourteen years or upwards offending in the premises shall, for every such offense, forfeit the sum of five shillings ; and that no person or persons whatsoever shall publicly cry, show forth, or expose for sale any wares, merchandise, fruit, herbs, goods, or chattels whatsoever, upon the Lord's day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried or showed forth or exposed for sale.

Penalty.

"2. And it is further enacted that no drover, horse-courser, wagoner, butcher, higgler, they or any of their servants, shall travel or come into his or their inn or lodging upon the Lord's day, or any part thereof, upon pain that each and every such offender shall forfeit twenty shillings for every such offense ; and that no person or persons shall use, employ, or travel upon the Lord's day with any boat, wherry, lighter, or barge, except it be upon extraordinary occasion to be allowed by some justice of the peace of the county, or some head officer, or some justice of the peace of the city, borough, or town corporate, where the fact shall be committed, upon pain that every person so offending shall forfeit and lose the sum of five shillings for every such offense."

Sunday
traveling
prohibited.

Penalty.

[The remainder of section two places such cases in the hands of ordinary justices of the peace, orders the confiscation of goods cried or exposed, and the collection of fines by distraint if needful. In case the offender cannot meet the penalties, he shall "be set public in the stocks for the space of two hours."]

"3. *Provided*, That nothing in this act contained shall extend to the prohibiting of dressing meats in families, or dressing or selling of meat in inns, cook-shops, victualing houses, for such as otherwise cannot be provided, nor to the crying or selling of milk before nine of the clock in the morning, or after four of the clock in the afternoon."

Exemptions.

[Section four requires all prosecution to be made within ten days of the offense.]

[Section five protects the district in which any one traveling on Sunday may chance to be robbed from being responsible for the amount lost, but requires the people to make diligent effort to apprehend the robber after "hue and cry" has been made, under penalty of forfeiting to the crown the amount which might have been recovered.]

"SECTION 6. *Provided, also*, That no person or persons upon the Lord's day shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment, or decree (except in case of treason, felony, or breach of the peace), but that the service of every such writ, process, warrant, order, judgment, or decree, shall be void to all intents and purposes whatever ; and the person or persons so serving or executing the same shall be as liable to the suit of the party grieved, and to answer damages to him for the doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment, or decree at all." "Revised Statutes of England from 1235-1685 A. D." (London, 1870), pages 779, 780; also "British Statutes at Large" (London, 1786), volume iii, page 365.

Legal
papers not to
be served on
Sunday.

SUNDAY LAWS OF THE UNITED STATES.

PROVISIONS OF THE SEVERAL STATES PROHIBITING
SECULAR LABOR ON SUNDAY.¹

ALABAMA.

[Code of Alabama, 1886, volume ii, chapter 7, article 14.]

Acts pro-
hibited on
Sunday.

Penalty.

SECTION 4045. CERTAIN ACTS PROHIBITED ON SUNDAY; PUNISHMENT. Any person who compels his child, apprentice, or servant to perform any labor on Sunday, except the customary domestic duties of daily necessity or comfort, or works of charity; or who engages in shooting, hunting, gaming, card-playing, or racing on that day; or who, being a merchant or shop-keeper, drugs excepted, keeps open store on that day, must, for the first offense, be fined not less than ten nor more than twenty dollars, and, for the second, or any subsequent offense, must be fined not less than twenty nor more than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months; but the provisions of this

Style
adopted.

¹In these Sunday laws, as in the State Constitutions, the marks of ellipsis are not inserted when irrelevant sections are omitted, the numbering of the sections sufficiently indicating such omission; but when any part of a section is omitted, the ellipsis is inserted. Sections declaring Sunday to be a *dies non*, or that legal papers shall not be served on that day, are usually omitted, as Sunday is by common law a *dies non juridicus*; and the custom of not holding court on that day or doing any judicial business, is universal in this country, no special statute being required.

Sunday laws
ridiculous.Illustrations
of absurdities.

The incongruity of Sunday laws with the American principles of absolute equality and entire separation of the state from the church is often ridiculous, and has already proved a fruitful subject for the satirist. As, in Georgia, "indecent bathing" is prohibited only *on Sunday*; hence, we must presume, it is allowed on other days! In Vermont, any person who "visits from house to house, except from motives of humanity or charity, or for moral or religious edification," is to be fined! One person cannot even take dinner with another without violating the law! Nevertheless, the judiciary of this country are endeavoring to uphold the constitutionality of these Sunday laws on the ground that they are civil, not religious. The judiciary will render a decision against a young man because he takes the lady of his choice out riding on Sunday, as was done by a New England court, and then with a mock solemnity proceed to assert that the Sunday laws of this country "rest entirely upon a civil basis." If the dark ages had only been possessed of some modern American judges, they might have disposed of their fifty million or more of martyrs on an "entirely civil basis," and thus avoided the ignominy that is necessarily attached to religious persecution.

A marked
difference!

An apt illustration of the distinction between the civil and religious Sabbath is given by the Rev. Byron Sunderland in the New York "Evangelist:"

"The distinction forcibly reminds me of a certain lord-bishop who said,

"'Oh, but you know, John, I don't swear as a *bishop*, only as a *man*.'

"'That is true, your Grace,' replied the valet, 'but I was thinking that when the devil comes after the *man*, what would become of the *bishop*.'"

A sure test.

Take the religious idea away from the day, and how ridiculously absurd these laws appear;—to illustrate: supply "Tuesday" whenever "Sunday" or its synonyms occur.

section do not apply to the running of railroads, stages, or steamboats, or other vessels navigating the waters of this State, or any manufacturing establishment which requires to be kept in constant operation.

Exceptions.

SECTION 4046. HOLDING PUBLIC MARKETS AND TRADING THEREIN ON SUNDAY. Any person who opens, or causes to be opened, for the purpose of selling or trading, any public market-house or place on Sunday, or opens or causes to be opened, any stall or shop therein, or connected therewith, or brings anything for sale or barter to such market or place, or offers the same for sale therein on that day, or buys or sells therein on that day (including live stock or cattle), must, on conviction, be punished as prescribed in the preceding section. Any place where people assemble for the purchase and sale of goods, wares, and merchandise, provisions, cattle, or other articles, is a market-house or place, within the meaning of this section.

Opening markets on Sunday.

Penalty.

ARIZONA.

[No Sunday law.]

No Sunday law in Arizona.

ARKANSAS.

[Mansfield's Digest of the Statutes of Arkansas, 1884, chapter 45, page 496.]

ARTICLE XLIX.—SABBATH-BREAKING.

SECTION 1883. Every person who shall, on the Sabbath or Sunday, be found laboring, or shall compel his apprentice or servant to labor, or to perform other services than customary household duties of daily necessity, comfort, or charity, on conviction thereof shall be fined one dollar for each separate offense.

Acts prohibited on Sunday.

SECTION 1884. Every apprentice or servant compelled to labor on Sunday shall be deemed a separate offense of the master.

SECTION 1885. The provisions of this act shall not apply to steamboats and other vessels navigating the waters of the State, nor to such manufacturing establishments as require to be kept in continual operation.

Exceptions.

SECTION 1886. Persons who are members of any religious society who observe as Sabbath any other day of the week than the Christian Sabbath, or Sunday, shall not be subject to the penalties of this act, so that they observe one day in seven, agreeable to the faith and practice of their church or society.

Sabbatarians exempted.

SECTION 1887. Every person who shall, on Sunday, keep open any store or retail any goods, wares, or merchandise, or keep open any dram shop or grocery, or sell or retail any spirits or wine, shall, on conviction thereof, be fined in any sum not less than ten dollars, nor more than twenty.

Merchandizing prohibited.

SECTION 1888. Charity or necessity on the part of the customer may be shown in justification of the violation of the last preceding action.

[Revised Statutes, chapter 44, division 7, article 2.]

Horse-racing
prohibited.

SECTION 1889. Every person who shall, on the Christian Sabbath, or Sunday, be engaged in the running of any single horse, for any bet or wager on the speed of such horse, or for pastime, or for amusement, without any bet or wager, or shall be engaged in any cock fight, on any bet or wager, or for pastime, without bet or wager, shall, on conviction thereof, be fined in any sum not exceeding one hundred dollars, nor less than twenty dollars.

[Act of January 12, 1853.]

Card-play-
ing prohibited.

SECTION 1890. Every person who shall, on the Christian Sabbath or Sunday, be engaged in any game of brag, bluff, poker, seven-up, three-up, twenty-one, vingt-et-un, thirteen cards, the old trick, forty-five, whist, or any other game at cards known by any name now known to the laws, or with any other new name, for any bet or wager on such games, or for amusement, without any bet or wager, shall, on conviction thereof, be fined in any sum not less than twenty-five dollars, nor more than fifty dollars.

[Act of January 19, 1855.]

Hunting
prohibited.

SECTION 1891. If any person shall be found hunting with a gun, with intent to kill game, or shooting for amusement on the Sabbath day, on conviction thereof he shall be fined in any sum not less than five nor more than twenty-five dollars for each separate offense.

[Act 18, section 2.]

Offenses
of minors.

SECTION 1892. If such offense should be committed by a minor, under the age of twenty-one years, and it shall be made to appear that the offense was committed by or with the consent or approbation of the parent or guardian of said minor, then such parent or guardian, as aforesaid, shall also be fined according to the provisions of section 1891.

[Act of November 5, 1875, section 4.]

Horse-racing
prohibited.

SECTION 1893. If any person shall be engaged in running a horse-race on the day known as the Christian Sabbath, or Sunday, on a bet or wager, or for sport or pastime, with or without such bet or wager, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not less than twenty-five nor for more than one hundred dollars.

[Acts and Resolutions of the General Assembly of the State of Arkansas, 1885, page 37.]

ACT XXXIII.

Section
exempting
Sabbatarians
repealed.

SECTION 1. That section 1886 of the Revised Statutes of Arkansas be, and the same is, hereby repealed.¹

¹In "Civil Government and Religion" (New York, 1889), by A. T. Jones, there is a summary of upward of twenty prosecutions of Sabbatarians, following this repeal. See also the speech of Senator Crockett, *ante* page 208.

SECTION 2. That section 1887 of the Revised Statutes of Arkansas be amended so as to read as follows: Every person who shall, on Sunday, keep open any store or retail any goods, wares, or merchandise, or keep open any dram-shop or grocery, or who shall keep the doors of the same so as to afford ingrees (ingress) or egress (egress), or retail or sell any spirits or wine, shall, on conviction thereof, be fined in any sum not less than twenty-five (\$25.00) dollars, nor more than one hundred (\$100.00) dollars.

Section 1887
amended.

ACT XXXIX.

SECTION 1. That, hereafter, it shall be unlawful for any club, person, or persons, to engage in any game or play of base-ball in this State on the Christian Sabbath, or Sunday.

Base-ball
playing pro-
hibited.

SECTION 2. That all persons violating the preceding section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten (\$10.00) dollars nor more than twenty (\$20.00) dollars in each case.

Penalty.

[Acts and Resolutions of the General Assembly of the State of Arkansas, 1887, page 12.]

ACT II.

SECTION 1. That no person who from religious belief keeps any other day than the first day of the week as the Sabbath shall be required to observe the first day of the week, usually called the Christian Sabbath, and shall not be liable to the penalties enacted against Sabbath-breaking; *Provided*, that no store or saloon shall be kept open or business carried on therein on the Christian Sabbath; *And provided further*, that no person so observing any other day shall disturb any religious congregation by his avocations or employments.¹

Sabbatarians
exempted.

CALIFORNIA.

[No Sunday Law.]²

No Sunday
law in Cali-
fornia.

¹ For the speech of Senator Crockett on the adoption of this exemption clause, see *ante* page 208. Senator Crockett declared that under the Arkansas Sunday law "such ill deeds and foul oppressions have been perpetrated upon an inoffensive class of free American citizens in Arkansas, for conscience' sake, as should mantle the cheek of every lover of his State and country with indignant shame."

Injustice of
Sunday laws.

² In 1883 the question of the repeal of the Sunday law was made the issue of the political campaign. In 1858 Sunday laws had been declared to be unconstitutional (see page 162 *et seq.*); but in 1861 a new law was enacted which was upheld by the new court, and the former decision was overruled. But few prosecutions, however, were made until early in the last decade, when, under the pressure of a fanatical move, so many arrests were made that the proceedings of the courts were clogged. Among those arrests was that of one of the most prominent Sabbatarians of the country, who was then manager of the Pacific Press Publishing House, the largest on the Pacific Coast. In the campaign of 1883, Sunday legislation was argued by the press in all its bearings, and the question probably had never been so thoroughly canvassed and its nature so well understood by the public before. As a consequence, the law, on the recommendation of the Governor, was immediately repealed. Attempts have been made repeatedly since to re-enact a Sunday law, but such attempts have met with receptions that are exceedingly discouraging even to the most sanguine agitators.

History of
the repeal of
California's
Sunday law.

Attempts to
re-enact the
Sunday law.

COLORADO.

[Criminal Code of Colorado, 1883, chapter 25.]

876.—DISTURBING PEACE ON SUNDAY—PENALTY.

Disturbing
peace on Sun-
day.

SECTION 188. (159.) Any person who shall hereafter knowingly disturb the peace and good order of society, by labor or amusement on the first day of the week, commonly called Sunday (works of necessity and charity excepted), shall be fined, on conviction thereof, in any sum not exceeding fifty dollars.

877.—DISTURBING FAMILY, CONGREGATION, PROCESSION ON SUNDAY—PENALTY.

Other dis-
turbances on
Sunday.

SECTION 189. (160.) Whoever shall be guilty of any noise, rout, or amusement on the first day of the week, called Sunday, whereby the peace of any private family may be disturbed, or who shall, by a disorderly or immoral conduct, interrupt or disturb the meeting, processions, or ceremonies of any religious denomination, on either a Sunday or week day, such person so offending shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty dollars.

[Chapter 64, page 658, section 2113.]

THEATERS, CIRCUS, ETC., INCLUDED—SUNDAY—FINE.

Sunday
theaters, etc.,
prohibited.

SECTION 18. This chapter shall extend to and include all theaters, circuses, and shows where an admission fee is charged for entrance thereto. No person shall be allowed by virtue of such license to open any place of public amusement, such as a theater, circus, or show, on the Sabbath, or Lord's day; but any person who shall so offend on such day shall be fined in a sum not less than fifty nor more than one hundred dollars, for every such offense.¹

[Criminal Code of Colorado, 1883, chapter 25, page 331.]

SECTION 839.—OPEN LEWDNESS—KEEPING LEWD HOUSE—PENALTY.

Sunday
gaming-
houses, etc.,
prohibited.

SECTION 151. (132.) If any person shall be guilty of open lewdness, or other notorious act of public indecency, tending to debauch the public morals, or shall keep open any tippling- or gaming-house on the Sabbath day or night, or shall maintain or keep a lewd house or place for the practice of fornication, or shall keep a common, ill-governed, and disorderly house, to the encouragement of idleness, gaming, drinking, fornication, or other misbehavior, every such person shall, on conviction, be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding six months.

Danger
of Sunday
legislation.

¹ On the right of prohibiting Sunday pastimes, see note from Mr. John Stuart Mill, *ante* page 160. He says that the only ground on which such restrictions "can be defended must be that they are religiously wrong, a motive of legislation which can never be too earnestly protested against."

CONNECTICUT.

[General Statutes of Connecticut, 1888, chapter 99, page 349.]

SECTION 1569. Every person who shall do any secular business or labor, except works of necessity or mercy, or keep open any shop, ware-house, or manufacturing or mechanical establishment, or expose any property for sale, or engage in any sport or recreation on Sunday, between sunrise and sunset, shall be fined not more than four dollars nor less than one dollar.

Secular
work pro-
hibited.

SECTION 1570. Every person who shall be present at any concert of music, dancing, or other public diversion on Sunday, or on the evening thereof, shall be fined four dollars.

Attendance
at Sunday
amusements
prohibited.

SECTION 1571. Prosecutions for violations of the two preceding sections shall be exhibited within one month after the commission of the offense.

SECTION 1572. No person who conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business and labor on that day, shall be liable to prosecution for performing secular business and labor on the Sabbath, provided he disturbs no other person while attending public worship.

Sabbatarians
exempted.

SECTION 2409. Every person who shall set or draw a seine or gill net in any river between sunset on Saturday evening and sunset on the following Sunday evening, between the fifteenth day of March and June, or who shall at any time in any river use a net or seine for catching shad, with a mesh less than two and a half inches square, shall be fined one hundred dollars.

Sunday
fishing pro-
hibited at
certain times.

SECTION 2533. Every person who shall on Sunday shoot or hunt or have in possession in the open air the implements for shooting, shall be fined not less than seven or more than twenty-five dollars.

Sunday
hunting pro-
hibited.

SECTION 2534. In case of conviction under any of the preceding sections of this chapter, one half of the fine imposed by the court shall be paid to the informer.

SECTION 3523. No railroad company shall run any train on any road operated by it within this State, between sunrise and sunset on Sunday, except from necessity or mercy; *Provided*, that before ten o'clock and thirty minutes in the forenoon and after three o'clock in the afternoon it may run trains carrying the United States mail, and such other trains or classes of trains as may be authorized by the railroad commissioners of this State, on application to them on the ground that the same are required by the public necessity, or for the preservation of freight.

Sunday
trains pro-
hibited.

SECTION 3524. No railroad company shall permit the handling, the loading, or the unloading of freight on any road operated by it, or at any of its depots or stations within this State, between sunrise and sunset on Sunday, except from necessity or mercy.

Railroad
work on Sun-
day prohib-
ited.

Penalty.

SECTION 3525. Every railroad company which shall violate any of the provisions of the five preceding sections shall forfeit to the State the sum of two hundred and fifty dollars for any such violation.

[Act of May 7, 1889, chapter 130.]

No person who receives a valuable consideration for a contract, express or implied, made on Sunday, shall defend any action upon such contract on the ground that it was so made, until he restores such consideration.¹

DELAWARE.

[Revised Statutes of the State of Delaware, 1874, chapter 131, page 782.]

Worldly
labor pro-
hibited on
Sunday.

SECTION 4. If any person shall perform any worldly employment, labor, or business on the Sabbath day (works of necessity and charity excepted), he shall be fined four dollars, and on failure to pay such fine and costs, shall be imprisoned not exceeding twenty-four hours.

If any carrier, peddler, wagoner, or driver of any public stage or carriage, or any carter, butcher, or drover, with his horse, pack, wagon, stage, carriage, cart, or drove, shall travel or drive upon the Sabbath day; or if any retailer of goods shall expose the same to sale on the Sabbath; he shall be fined eight dollars, and on failure to pay such fine and costs, shall be imprisoned not exceeding twenty-four hours.

Any justice of the peace may stop any such person so traveling on the Sabbath, and detain him until the next day.

If any person shall be guilty of fishing, fowling, horse-racing, cock fighting, or hunting game on the Sabbath day, he shall be fined four dollars, and on failure to pay such fine and costs, shall be imprisoned as aforesaid.

Amusements
prohibited.

If any number of persons shall assemble to game, play, or dance on the Sabbath day, and shall engage, or assist in such game, play, or dance, every such person shall be fined four dollars, and on failure to pay such fine and costs, shall be imprisoned as aforesaid.

Any justice of the peace of the county shall have jurisdiction and cognizance of the offenses mentioned in this section.

Sunday
contracts.

Injustice
of invalidating
them.

Opposition
to separation
of church and
state.

¹For a discussion of the subject of Sunday contracts, see the dissent of Judge Caldwell, *ante* pages 144, 145; also note from Judge Thurman, *ante* page 153. The state has no more right to avoid a paper made on Sunday than to avoid a paper made on Tuesday or any other day of the week. As evident as is the religious phase of these Sunday statutes, the State Legislatures still cling to them with all the tenacity characteristic of church-and-state governments. Every movement for the freedom of the individual, every movement that encourages individuality and lessens the power of the government over the minds and actions of its subjects, has been successful only after a long and severe contest with the dominant church, with established custom, and with superstitious laws. It was only by indomitable will and indefatigable energy that Jefferson and Madison and their co-laborers succeeded in establishing the principles of entire separation of church and state in our national political system; and it will take many years, using the same energy, to establish the same principles in the political systems of the States.

DISTRICT OF COLUMBIA.

[Laws of the District of Columbia, 1868, pages 136, 137.]

AN ACT TO PUNISH BLASPHEMERS,¹ SWEARERS, DRUNKARDS, AND SABBATH-BREAKERS, ETC.

SECTION 10. *Be it enacted*, That no person whatsoever shall work or do any bodily labor on the Lord's day, commonly called Sunday, and that no person having children, servants, or slaves, shall command, or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's day (works of necessity and charity always excepted), nor shall suffer or permit any children, servants, or slaves, to profane the Lord's day by gaming, fishing, fowling, hunting, or unlawful pastimes or recreations; and that every person transgressing this act, and being thereof convicted by the oath of one sufficient witness, or confession of the party before a single magistrate, shall forfeit two hundred pounds of tobacco, to be levied and applied as aforesaid.

Acts prohibited on Sunday.

SECTION 11. *And be it likewise enacted*, That no housekeeper shall sell any strong liquor on Sunday (except in cases of absolute necessity), or suffer any drunkenness, gaming, or unlawful sports or recreations, in his or her house, on pain of forfeiting two thousand pounds of tobacco to his lordship, one half to the use aforesaid, and the other half to him that will sue for the same, to be recovered by action of debt, bill, plaint, or information, wherein no essoin, protection, or wager of law shall be allowed.

Further prohibitions.

[Laws of the District of Columbia, 1868, page 243.]

SECTION 10. *Be it further enacted*, That . . . said levy court shall also have power to pass such ordinances as it may deem necessary to effectually prevent Sabbath-breaking in said county by hunting, gaming, fishing, or otherwise, on Sunday.

Power delegated to levy court.

[Revised Statutes of the United States Relating to the District of Columbia, passed by the first session forty-third Congress, 1873-74, chapter 13, page 40, and chapter 1, page 9.]

SECTION 335. It shall be the duty of the board of police at all times of the day and night within the boundaries of said police district . . . to see that all laws relating to the observance of Sunday . . . are promptly enforced.

Sunday observance to be enforced.

SECTION 92. The laws of the State of Maryland not inconsistent with this title, as the same existed on the twenty-seventh day of February, 1801, except as since modified or repealed by Congress or by authority thereof, or until so modified or repealed, continue in force within the District.

Section adopting Maryland's religious laws.

¹ For the provisions of this act concerning blasphemy, see *ante* pages 80, 81, note. For the first offense the offender is to be bored through the tongue, and fined twenty pounds; for the second offense he is to have the letter B burned in his forehead, and to be fined forty pounds; and for the third offense he must "suffer death without the benefit of the clergy." And under that law, all Unitarians would be condemned.

Punishment of blasphemy.

FLORIDA.

[McClellan's Digest of the Laws of Florida, 1881, chapter 79, page 425.]

CRIMES — MISDEMEANORS.

Sunday
business pro-
hibited.

SECTION 9. It shall not be lawful for any person to follow any pursuit, business, or trade on the Sabbath, the first day of the week, either by manual labor or with animal or mechanical power, except the same be work of "necessity," or justified by the accident or circumstances of the occasion.

Sunday
merchandiz-
ing prohibited.

SECTION 10. No merchant or shop-keeper or other person shall keep open store, or dispose of any wares, merchandise, goods, or chattels on the Sabbath day, or sell or barter the same; *Provided*, that in cases of emergency or necessity they may dispose of the comforts and necessities of life to customers without keeping open doors.

SECTION 11. Any violation of this law shall be deemed a misdemeanor, and any person convicted thereof shall be subject to a fine of not less than twenty dollars and not more than fifty dollars.

SECTION 12. If any person on the Sabbath day shall employ his apprentice or servant in labor or other business, except it be in the ordinary household business of daily necessity, or other work of necessity or charity, he shall forfeit and pay the sum of ten dollars for every such offense.

Penalty.

SECTION 13. No merchant or shop-keeper or other person shall keep open store or dispose of any wares, merchandise, goods, or chattels on the Sabbath day, or sell or barter the same, upon pain that every person so offending shall forfeit and pay the sum of twenty dollars for every such offense.

Sunday
shooting pro-
hibited.

SECTION 14. It shall not be lawful for any person or persons within the State of Florida, to use fire-arms by hunting game or firing at targets on Sunday; and any violation of this section shall be deemed a misdemeanor, and the person or persons so offending shall, upon conviction before any justice of the peace, be punished by a fine of not less than five nor more than twenty-five dollars, or imprisonment not exceeding twenty days.

GEORGIA.

[Code of the State of Georgia, 1882, part 4, title 1, division 10, page 1196.]

RUNNING FREIGHT TRAINS ON THE SABBATH DAY.

Certain
Sunday trains
prohibited.

SECTION 4578. If any freight train, [excursion trains, or other trains than the regular trains run for the carrying of the mails or passengers¹], shall be run on any railroad in this State on the Sabbath day (known as Sunday), the superintendent of the transportation

¹Inserted in this section by amendment during the session of the Legislature of 1882-83.

of such railroad company, or the officer having charge of the business of that department of the railroad, shall be liable for indictment for a misdemeanor in each county through which such trains shall pass, and, on conviction, shall be for each offense punished as prescribed in section 4310 of this code. On such trial it shall not be necessary to allege or prove the names of any of the employees engaged on such train, but the simple fact of the train being run. The defendant may justify himself by proof that such employees acted in direct violation of the orders and rules of the defendant; *Provided, always*, that whenever any train on any railroad in this State, having in such train one or more cars loaded with live stock, which train shall be delayed beyond schedule time, shall not be required to lay over on the line of road or route during Sunday, but may run on to the point where, by due course of shipment or consignment, the next stock-pen on the route may be, where said animals may be fed and watered, according to the facilities usually afforded for such transportation. And it shall be lawful for all freight trains on the different railroads in this State, running over said roads on Saturday night, to run through to destination; *Provided*, the time for arrival, according to the schedule by which the train or trains started on the trip, shall not be later than eight o'clock on Sunday morning.

Liability
of officers.

SECTION 4579. (4493.) (4451.) VIOLATING SABBATH. Any tradesman, artificer, workman, or laborer, or other person whatever, who shall pursue their business or work of their ordinary callings on the Lord's day (works of necessity or charity only excepted), shall be guilty of a misdemeanor, and, on conviction, shall be punished as prescribed in section 4310 of this code.¹

Sunday
labor pro-
hibited.

SECTION 4580. HUNTING ON SUNDAY; PENALTY. Any person or persons who shall hunt any kind of game with gun or dogs, or both, on the Sabbath day, shall be guilty of a misdemeanor, and, on conviction, shall be punished as prescribed in section 4310 of this code.¹

Sunday
hunting pro-
hibited.

¹ This Georgia Sunday law furnishes a good illustration of how bigots are enabled to punish persons whose doctrines they abhor, in a way that the framers of the laws never intended, and shows the danger of legislatures entering into the realm of religion, and enacting such laws. Sections 4579, 4580 provide that persons convicted under those sections "shall be punished as prescribed in section 4310 of this code." Section 4310 provides that persons punished under it "shall be punished by a fine not to exceed one thousand dollars, imprisonment not to exceed six months, to work in the chain-gang on the public works, or on such other works as the county authorities may employ the chain-gang, not to exceed twelve months, and any one or more of these punishments may be ordered in the discretion of the judge."

Georgia
Sunday law.

But to show how much more severe this law may be in the cases of Sabbatarians, it is only necessary to suggest the fact that they will not, under any circumstances, work upon the day that they consider as sacred. Then what will be the consequence? The consequence will simply depend upon the humanity of the Supreme Court of the county. For if Sabbatarians obstinately and repeatedly refuse to work on Saturday, if they were so ordered, it would be much easier to convict them of "insurrection" than it formerly was to make "treason" cover the cases of obstinate Sabbatarians, in England, as was frequently done. The "People's Cyclopedia of Universal Knowl-

Possibility
of severe
persecution.

Probable
"insurrec-
tion" of Sab-
batarians.

Indecent
bathing pro-
hibited on
Sunday.

Sabbatarians
punished
capitally.

Death
penalty in
Georgia.

No security
against per-
secution.

With relig-
ious revivals
come revivals
of bigotry.

Probability
of persecution.

Justice
perverted.

Individuals
should be
left free.

Interference
with individ-
uality illegiti-
mate.

SECTION 4581. INDECENT BATHING. Any person who shall bathe in any stream or pond of water on the Sabbath day, in view of any road or pass-way, leading to or from any house of religious worship,

edge," in an account of one of these cases, says: "On October 19, 1661, Mr. James [Rev. John James, a Sabbatarian minister] was arrested in his pulpit, tried, and condemned on the false charge of 'treason,' a proceeding not uncommon in those days in order to get rid of men whose religious and reformatory views could not be answered otherwise. He was 'hung, drawn, and quartered.' 'After he was dead, his heart was taken out and burned, his quarters were affixed to the gates of the city, and his head was set up in Whitechapel, on a pole opposite the alley in which his meeting-house stood.'" Pages 1597, 1598, article "Seventh-day Baptists."

So if the Sabbatarians in the chain-gangs of Georgia obstinately refuse to obey orders by not working on Saturday, and are convicted of "insurrection" before the Supreme Court of the county, then they shall, according to section 4821, "be deemed guilty of a capital offense, and punished with death, or such other punishment as the judge in his discretion may inflict."

The idea, however, that persecution would result from these laws is generally considered with incredulity. The assertion is continually made that the public mind will not allow persecution. But a true and forcible answer is given by John Stuart Mill, in speaking of religious disabilities: "But unhappily there is no security in the state of the public mind, that the suspension of worse forms of legal persecution, which has lasted for about the space of a generation, will continue. In this age the quiet surface of routine is as often ruffled by attempts to resuscitate past evils, as to introduce new benefits. What is boasted of at the present time as the revival of religion, is always, in narrow and uncultivated minds, at least as much the revival of bigotry; and where there is the strong permanent leaven of intolerance in the feelings of a people, which at all times abides in the middle classes of this country, it needs but little to provoke them into actively persecuting those whom they have never ceased to think proper objects of persecution."

That there is a probability of persecution, and of the severest that the laws can by any means be made to inflict, is evident from the recent case of *King v. the State*, the recent Tennessee Sunday case. The law makes provision for the punishment of violations of Sunday sacredness by a fine of only three dollars. But members of the dominant religious sect had Mr. King indicted under the charge that *his plowing upon Sunday was a public nuisance* (which the law never intended, and which is manifestly a perversion of the law), and in this way he was fined seventy-five dollars and costs for working on a day that some one else considers sacred! Such action outrages justice exactly as much as though the Sunday-keepers in the country were being fined and sent to jail for working on Saturday, on the ground that such work was a public nuisance, because, forsooth, some Sabbatarians regard that day as sacred!

If the individual, says Mr. Mill, "refrains from molesting others in what concerns them, and merely acts according to his own inclination and judgment in things which concern himself, the same reasons which show that opinion should be free, prove also that he should be allowed, without molestation, to carry his opinions into practice at his own cost. That mankind are not infallible; that their truths, for the most part, are only half-truths; that unity of opinion, unless resulting from the fullest and freest comparison of opposite opinions, is not desirable, and diversity not an evil, but a good, until mankind are much more capable than at present of recognizing all sides of the truth,—are principles applicable to men's modes of action, not less than to their opinions. As it is useful that while mankind are imperfect there should be different opinions, so it is that there should be different experiments of living; that free scope should be given to varieties of character short of injury to others; and that the worth of different modes of life should be proved practically, when any one thinks fit to try them. It is desirable, in short, that in things which do not primarily concern others, individuality should assert itself. Where not the person's own character, but the traditions or customs of other people are the rule of conduct, there is wanting one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress."

shall be considered guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not exceeding five hundred dollars, or imprisoned in the common jail of the county, at the discretion of the court, not exceeding six months. Penalty.

SECTION 4582. FINES FOR VIOLATION OF THE SABBATH. All moneys arising from fines imposed for offenses, the gist of which consists in their being committed on the Sabbath day, shall be paid to the ordinary of the county, to be by him distributed for the purpose of establishing and promoting Sabbath-schools in the county. Fines to go to religious purposes.

[Code of the State of Georgia, 1882, page 1137.]

SECTION 4310. (4245.) (4209.) PUNISHMENT OF ACCESSORIES AFTER THE FACT. Accessories after the fact, except where it is otherwise ordered in this code, shall be punished by a fine not to exceed one thousand dollars, imprisonment not to exceed six months, to work in the chain-gang on the public works, or on such other works as the county authorities may employ the chain-gang, not to exceed twelve months, and any one or more of these punishments may be ordered in the discretion of the judge; *Provided*, that nothing herein contained shall authorize the giving the control to private persons, or their employment by the county authorities in such mechanical pursuits as will bring the products of their labor into competition with the products of free labor. Penalty for violations of Sunday sacredness.

[Code of the State of Georgia, 1882, page 1248 *et seq.*]

OF CONVICTS.

SECTION 4814. CONVICTS; HOW DISPOSED OF. In all cases where persons are convicted of misdemeanor, and sentenced to work in the chain-gang on the public works, or public roads, or when such persons are confined in jail for non-payment of fines imposed for such misdemeanor, the ordinary of the county, and where there is a Board of Commissioners of roads and revenues of the counties, then said Board of Commissioners, and in those counties where there is a county judge, then the said county judge, where such conviction was had, or where such convicts may be confined, may place such convicts, in the county or elsewhere, to work upon such public works of the county, in chain-gangs, or otherwise, or hire out such convicts, upon such terms and restrictions as may subserve the ends of justice, and place such convicts under such guards as may be necessary for their safe keeping.¹ Disposition of convicts.

SECTION 4821. (4723.) INSURRECTION. Whenever any convict or convicts now confined, or hereafter to be confined, in the penitentiary of this State, or member or members of the chain-gang now confined, or hereafter to be confined, in the penitentiary of this State, or wherever else employed as such, shall be guilty of insurrection or attempt at insurrection, such convict or convicts, or member or mem- Insurrection.

¹This section referred to and construed in 55 Georgia, 435.

Possible fate
of obstinate
Sabbatarians.

bers of the chain-gang, shall, upon trial and conviction in the Supreme Court of the county in which the crime is committed, be deemed guilty of a capital offense, and punished with death, or such other punishment as the judge in his discretion may inflict.¹

IDAHO.

[No Sunday law.] ²

ILLINOIS.

[Revised Statutes of Illinois, 1889, chapter 38, page 499.]

SUNDAY.

Sunday
tippling-
houses pro-
hibited.

SECTION 259. TIPLING-HOUSE ON. Whoever keeps open any tippling-house, or place where liquor is sold or given away, upon the first day of the week, commonly called Sunday, shall be fined not exceeding two hundred dollars.

Disturbing
the peace.

SECTION 260. DEFINITION. Sunday shall include the time from midnight to midnight.³

SECTION 261. DISTURBING PEACE OF SOCIETY ON. Whoever disturbs the peace and good order of society by labor (works of necessity and charity excepted), or by any amusement or diversion on Sunday, shall be fined not exceeding twenty-five dollars. This section shall not be construed to prevent watermen and railroad companies from landing their passengers, or watermen from loading and unloading their cargoes, or ferrymen from carrying over the water travelers and persons moving their families, on the first day of the week, nor to prevent the due exercise of the rights of conscience by whomever thinks proper to keep any other day as a Sabbath.

Exemption.

¹ The extremity to which those who disregard Sunday as the Sabbath or rest day may be subjected in Georgia, is in marked contrast with the protection in the exercise and enjoyment of equal rights and privileges guaranteed by section 2776 of the code of Iowa. (See page 286.) One is the voice of religious intolerance; the other the expression of philanthropy, equality, and justice.

A contrast.

² The Revised Statutes of Idaho for 1887 contain no Sunday law. The statutes of the Territory, that were published in 1874-75 (pages 844, 845), however, provided that "no shop-keeper, merchant, saloon-keeper, or other person, except apothecaries and druggists, shall keep open the front door of any shop, store, saloon, or other place of business, between the hours of ten o'clock in the forenoon, and three o'clock in the afternoon," under penalty of a fine of from twenty to fifty dollars.

On the other hand, the Revised Statutes for 1887 provide that "no books, papers, tracts, or documents of a political, sectarian, or denominational character must be used or introduced in any school established under the provisions of this Title, and any and every political, sectarian, or denominational doctrine is hereby expressly forbidden to be taught therein, nor shall any teacher nor any district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this Title."

Time to
begin and
end Sabbath.

³ The inconsistency of Sabbath legislation is shown in such provisions as this. Some believe the Sabbath should begin and end at midnight, others at sunset, adducing the scripture, "From even to even shall ye celebrate your Sabbath" (Lev. xxiii, 32), and Mark i, 32; Deut. xvi, 6; Judges xiv, 18, etc., in support of the view.

SECTION 262. DISTURBING PEACE OF FAMILY ON. Whoever shall be guilty of any noise, rout, or amusement on the first day of the week, called Sunday, whereby the peace of any private family may be disturbed, shall be fined not exceeding twenty-five dollars.

Disturbance
of families.

[Revised Statutes of Illinois, 1889, page 998,]

PENITENTIARIES.

SECTION 31. SUNDAY. Facilities for attending religious services regularly on Sundays shall be afforded each convict, so far as the same can be done judiciously, and upon no pretext shall a convict on contract be required to labor on Sunday, nor shall any convict be required to do other than necessary labor for the State on that day.

Sunday
services to be
provided for
convicts.

INDIANA.

[Revised Statutes of the State of Indiana, 1888.]

SABBATH-BREAKING.

SECTION 2000. Whoever, being over fourteen years of age, is found on the first day of the week, commonly called Sunday, rioting, hunting, fishing, quarreling, at common labor, or engaged in his usual avocation (works of charity and necessity only excepted), shall be fined in any sum not more than ten nor less than one dollar ; but nothing herein contained shall be construed to affect such as conscientiously observe the seventh day of the week as the Sabbath, travelers, families removing, keepers of toll-bridges and toll-gates, and ferrymen acting as such.

Secular
employments
prohibited on
Sunday.

Sabbatarians
exempted.

BASE-BALL.

SECTION 2000a. It shall be unlawful for any person or persons to engage in playing any game of base-ball, where any fee is charged, or where any reward or prize, or profit, or article of value is depending upon the result of such game, on the first day of the week, commonly called Sunday ; and every person so offending shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding twenty-five dollars.

Sunday
base-ball play-
ing prohibited.

SELLING LIQUOR ON SUNDAY.

SECTION 2098. Whoever shall sell, barter, or give away to be drunk as a beverage, any spirituous, vinous, malt, or other intoxicating liquor upon Sunday, the fourth day of July, the first day of January, the twenty-fifth day of December (commonly called Christmas day), Thanksgiving day as designated by proclamation of the Governor of this State or the President of the United States, on any legal holiday ; or upon the day of any election in the township, town, or city where the same may be holden ; or between the hours of eleven o'clock P. M. and five o'clock A. M., shall be fined in any sum not more than fifty dollars nor less than ten dollars, to which may be added imprisonment in the county jail not more than sixty days nor less than ten days.

Sunday
liquor-selling
prohibited.

DRUGGISTS SELLING LIQUOR ON SUNDAY.

Sunday
liquor-selling
by druggists
prohibited.

SECTION 2099. It shall be unlawful for any druggist or druggist clerk to sell, barter, or give away any spirituous, vinous, malt, or other intoxicating liquor on Sunday ; or upon the fourth day of July, the first day of January, the twenty-fifth day of December (commonly called Christmas), Thanksgiving day, on any legal holiday ; or upon the day of any State, county, township, primary, or municipal election, in the township, town, or State where the same may be holden ; or between the hours of eleven o'clock P. M. and five o'clock A. M. of any day, unless the person, to whom the same is sold, bartered, or given shall have first procured a written prescription therefor from some regular practicing physician of the county where the same is so sold, bartered, or given away. Any person so offending shall be fined in any sum not more than fifty dollars nor less than ten dollars, to which may be added imprisonment in the county jail not more than sixty days nor less than ten days.

IOWA.

[McLain's Annotated Code and Statutes, 1888, volume ii, page 1574, chapter 12.]

Secular
employments
prohibited on
Sunday.

SECTION 5438. BREACH OF SABBATH. 4072. If any person be found on the first day of the week, commonly called Sabbath, engaged in any riot, fighting, or offering to fight, or hunting, shooting, carrying of fire-arms, fishing, horse-racing, dancing, or in any manner disturbing any worshiping assembly or private family ; or in buying or selling property of any kind, or in any labor, the work of necessity and charity only excepted, every person so offending shall on conviction be fined in a sum not more than five dollars nor less than one dollar, to be recovered before any justice of the peace in the county where such offense is committed, and shall be committed to the jail of said county until the said fine, together with the costs of prosecution, shall be paid ; but nothing herein contained shall be construed to extend to those who conscientiously observe the seventh day of the week as the Sabbath, or to prevent persons traveling, or families emigrating, from pursuing their journey, or keepers of toll-bridges, toll-gates, and ferrymen from attending the same.

Sabbatarians
exempted.

TRIAL BY JURY.

Equality of
Sabbatarians
and Sunday-
keepers.

SECTION 2776. A person whose religious faith and practice are to keep the seventh day of the week as a day set apart by divine command, and dedicated to rest and religious uses, cannot be compelled to attend as a juror on that day, and shall in other respects be protected in the enjoyment of his opinions, to the same extent as those who keep the first day of the week.¹

¹ This is equality as far as Sabbatarians and Sunday-keepers are concerned ; but why not extend this equality to all—to the nullifidian as well as to the Christian ? "*All men are created equal*," and any infringement of this equality is un-American.

KANSAS.

[General Statutes, volume i, 1889.]

SECTION 2395. LABORING ON SUNDAY. Every person who shall either labor himself, or compel his apprentice, servant, or any other person under his charge or control, to labor or perform any work other than the household offices of daily necessity, or other works of necessity or charity, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding twenty-five dollars.

Secular
employments
prohibited on
Sunday.

SECTION 2396. EXCEPTIONS. The last section shall not extend to any person who is a member of a religious society, by whom any other than the first day of the week is observed as a Sabbath, so that he observes such Sabbath, nor to prohibit any ferryman from crossing passengers on any day in the week.

Sabbatarians
exempted.

SECTION 2397. HORSE-RACING, ETC., ON SUNDAY. Every person who shall be convicted of horse-racing, cock fighting, or playing at cards, or game of any kind, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding fifty dollars.

Sunday
horse-racing,
etc., pro-
hibited.

SECTION 2398. SELLING, ETC., ON SUNDAY. Every person who shall expose to sale any goods, wares, or merchandise, or shall keep open any ale or porter house, grocery, or tippling shop, or shall sell or retail any fermented or distilled liquor, on the first day of the week, commonly called Sunday, shall, on conviction, be adjudged guilty of a misdemeanor, and fined not exceeding fifty dollars.

Sunday
trafficking
prohibited.

SECTION 2399. EXCEPTIONS. The last section shall not be construed to prevent the sale of any drugs or medicines, provisions, or other articles of immediate necessity.

Exceptions.

SECTION 2439. HUNTING. Every person who shall engage in hunting or shooting on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and upon conviction be fined in a sum not less than five nor more than twenty dollars.

Sunday
hunting
prohibited.

KENTUCKY.

[General Statutes of Kentucky, 1883, chapter 21, pages 245, 320, 344.]

SECTION 9. If any proceeding is directed by law to take place, or any act is directed to be done, on a particular day of a month, if that day happen to be Sunday, the proceeding shall take place, or the act shall be done, on the next day.

SECTION 10. No work or business shall be done on the Sabbath day, except the ordinary household offices, or other work of necessity or charity. If any person on the Sabbath day shall himself be found at his own, or any other trade or calling, or shall employ his apprentices or other person, in labor or other business, whether the same be for profit

Secular
employments
prohibited on
Sunday.

Penalty. or amusement, unless such as is permitted above, he shall be fined not less than two nor more than fifty dollars for each offense. Every person or apprentice so employed shall be deemed a separate offense. Persons who are members of a religious society, who observe as the Sabbath any other day in the week than Sunday, shall not be liable to the penalty prescribed in this section, if they observe as the Sabbath one day in each seven, as herein provided.

Sabbatarians exempted.

Hunting prohibited. SECTION 11. If any person shall hunt game with a gun or dogs on the Sabbath, he shall be fined not less than five nor more than fifty dollars for each offense.

Suit to be commenced within six months.

SECTION 23. Prosecutions by the commonwealth for felony shall not be barred by lapse of time or any law of limitations. Prosecutions by the commonwealth to recover a penalty for a violation of any penal statute or law, and an action or procedure at the instance of any person, to recover any such penalty, shall be commenced within one year after the right to such penalty accrued, and not after, unless a different time is allowed by the law imposing the penalty. Prosecutions for profane swearing, cursing, or being drunk, or Sabbath-breaking, and against surveyors of public roads, shall be commenced within six months after the offense is committed, and not after.

LOUISIANA.

[Acts of Louisiana, 1886, page 28.]

Secular employments prohibited on Sunday.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana,* That from and after the thirty-first day of December, A. D. 1886, all stores, shops, saloons, and all places of public business, which are or may be licensed under the law of the State of Louisiana, or under any parochial or municipal law or ordinance, and all plantation stores, are hereby required to be closed at twelve o'clock on Saturday nights, and to remain closed continuously for twenty-four (24) hours, during which period of time it shall not be lawful for the proprietors thereof to give, trade, barter, exchange, or sell any of the stock or any article of merchandise kept in such establishment.

Penalty. SECTION 2. *Be it further enacted, etc.,* That whosoever shall violate the provisions of this act, for each offense shall be deemed guilty of a misdemeanor, and on trial and conviction, shall pay a fine of not less than twenty-five dollars nor more than two hundred and fifty dollars, or be imprisoned for not less than ten days nor more than thirty days, or both, at the discretion of the court; provisions of this act shall not apply to newsdealers, keepers of soda fountains, places of resort for recreation and health, watering-places, and public parks, nor prevent the sale of ice.

Exceptions. SECTION 3. *Be it further enacted, etc.,* That the provisions of this act shall not apply to newspaper offices, printing-offices, bookstores, drug stores, apothecary shops, undertaker shops, public and private mar-

kets, bakeries, dairies, livery-stables, railroads, whether steam or horse, hotels, boarding-houses, steamboats and other vessels, warehouses for receiving and forwarding freights, restaurants, telegraph offices, and theaters, or any place of amusement, providing no intoxicating liquors are sold in the premises ; *Provided*, that stores may be opened for the purpose of selling anything necessary in sickness and for burial purposes ; *Provided*, that nothing in this act shall be construed so as to allow hotels or boarding-houses to sell or dispose of alcoholic liquors, except wine for table use on Sundays ; *And provided further*, that no alcoholic, vinous or malt liquors shall be given, traded, or bartered, or sold, or delivered in any public place on said day, except when actually administered or prescribed by a practicing physician in the discharge of his professional duties in case of sickness ; in such case the physicians administering the intoxicating liquors may charge therefor.

Exceptions.

MAINE.

[Revised Statutes of the State of Maine, 1883, chapter 124, page 905.]

SECTION 17. Whoever on the Lord's day, or at any other time, behaves rudely or indecently within the walls of any house of public worship ; wilfully interrupts or disturbs any assembly for religious worship within the place of such assembly or out of it ; sells or exposes for sale within one mile thereof and during the time of their meeting, intoxicating liquors, refreshments, or merchandise, except in his usual course and place of business ; exhibits any show or play ; engages or aids in any horse-race, gambling, or other sport, to the disturbance of such assembly ; or, coming within their neighborhood, refuses, on request, either immediately and peaceably to retire beyond their hearing, or to conform to their established regulations, shall be punished by imprisonment for not more than thirty days, and by fine not exceeding ten dollars.

Acts prohibited on Sunday.

SECTION 20. Whoever, on the Lord's day, keeps open his shop, work-house, ware-house, or place of business ; travels, or does any work, labor, or business on that day, except works of necessity or charity ; uses any sport, game, or recreation ; or is present at any dancing, public diversion, show, or entertainment, encouraging the same, shall be punished by fine not exceeding ten dollars.

Secular employments prohibited.

SECTION 21. If any innholder or victualer, on the Lord's day, suffers any persons, except travelers, strangers, or lodgers, to abide in his house, yard, or field, drinking, or spending their time idly, at play or doing any secular business, except works of charity or necessity, he shall be punished by fine not exceeding four dollars for each person thus suffered to abide ; and if after conviction he is again guilty, by fine not exceeding ten dollars for each offense ; and upon a third conviction, he shall also be incapable of holding any license ; and every person so abiding shall be fined not exceeding four dollars for each offense.

Sunday loafing to be prohibited.

SECTION 22. The Lord's day includes the time between twelve o'clock on Saturday night and twelve o'clock on Sunday night.

Sabbatarians
exempted.

SECTION 23. No person conscientiously believing that the seventh day of the week ought to be observed as the Sabbath, and actually refraining from secular business and labor on that day, is liable to said penalties for doing such business or labor on the first day of the week, if he does not disturb other persons.

Suit to be
commenced
within six
months.

SECTION 24. Tythingmen, or any other persons, may prosecute for all offenses described in sections seventeen, twenty, and twenty-one, at any time within six months after the commission thereof.

MARYLAND.

[Maryland Code of Public and General Laws, 1888, volume i, article 27, page 538.]

SABBATH-BREAKING.

Acts pro-
hibited on
Sunday.

SECTION 247. No person whatsoever shall work or do any bodily labor on the Lord's day, commonly called Sunday, and no person having children or servants shall command or willingly suffer any of them to do any manner of work or labor on the Lord's day (works of necessity and charity always excepted), nor shall suffer or permit any children or servants to profane the Lord's day by gaming, fishing, fowling, hunting, or unlawful pastime or recreation; and every person transgressing this section and being thereof convicted before a justice of the peace, shall forfeit five dollars, to be applied to the use of the county.

Sunday
trafficking
prohibited.

SECTION 248. No person in this State shall sell, dispose of, barter, or if a dealer in any one or more of the articles of merchandise in this section mentioned, shall give away on the Sabbath day, commonly called Sunday, any tobacco, cigars, candy, soda, or mineral waters, spirituous or fermented liquors, cordials, lager beer, wine, cider, or any other goods, wares, or merchandise whatsoever; and any person violating any one of the provisions in this section shall be liable to indictment in any court in this State having criminal jurisdiction, and upon conviction thereof shall be fined a sum not less than twenty nor more than fifty dollars, in the discretion of the court, for the first offense, and if convicted a second time for a violation of this section, the person or persons so offending shall be fined a sum not less than fifty nor more than five hundred dollars, and be imprisoned for not less than ten nor more than thirty days, in the discretion of the court, and his, her, or their license, if any were issued, shall be declared null and void by the judge of said court; and it shall not be lawful for such person or persons to obtain another license for the period of twelve months from the time of such conviction, nor shall a license be obtained by any other person or persons to carry on said business on the premises or elsewhere, if the person, so as aforesaid convicted, has any interest whatever therein, or shall derive any profit whatever therefrom; and in case of being convicted more than twice for a violation of this section, such person or persons on each occasion shall be imprisoned for not less than thirty nor more than sixty days, and fined a sum not less than double that im-

Penalties.

posed on such person or persons on the last preceding conviction ; and his, her, or their license, if any were issued, shall be declared null and void by the court, and no new license shall be issued to such person or persons for a period of two years from the time of such conviction, nor to any one else to carry on said business wherein he or she is in anywise interested, as before provided for the second violation of the provision of this section ; and half of all the fines to be imposed under this section shall be paid to the State, and the other half to the informer ; this section is not to apply to milk or ice dealers in supplying their customers, or to apothecaries when putting up *bona fide* prescriptions.

Penalty.

SECTION 249. It shall not be lawful to keep open or use any dancing saloon, opera house, ten pin alley, barber saloon, or ball alley within this State on the Sabbath day, commonly called Sunday ;¹ and any person or persons, or body politic or corporate, who shall violate any provisions of this section, or cause or knowingly permit the same to be violated by a person or persons in his, her, or its employ, shall be liable to indictment in any court of this State having criminal jurisdiction, and upon conviction thereof, shall be fined a sum not less than fifty dollars nor more than one hundred dollars in the discretion of the court, for the first offense ; and if convicted a second time for a violation of this section, the person or persons, or body politic or corporate, shall be fined a sum not less than one hundred nor more than five hundred dollars ; and if a natural person, shall be imprisoned not less than ten nor more than thirty days, in the discretion of the court ; and in the case of any conviction or convictions under this section, subsequent to the second, such person or persons, body politic or corporate, shall be fined on each occasion a sum at least double that imposed upon him, her, them, or it, on the last preceding conviction ; and if a natural person, shall be imprisoned not less than thirty nor more than sixty days, in the discretion of the court ; all fines to be imposed under this section shall be paid to the State.

Places of amusement prohibited on Sunday.

Penalties.

[Maryland Code of Public and General Laws, 1888, volume ii, page 1046.]

OYSTERS.

SECTION 22. It shall be unlawful for any person to take or catch oysters on Sunday or at night ; and any person violating this section shall, on conviction thereof, be fined a sum not less than fifty dollars nor more than three hundred dollars, or sentenced to the house of correction for a period of not less than three months nor more than one year, or forfeit the boat, vessel, or canoe used in violation of this section, at the discretion of the judge or justice of the peace trying the case.

Oyster-catching.

¹John Stuart Mill, in treating on the subject of illegitimate authority of society over the individual, says : "There are many who consider as an injury to themselves any conduct which they have a distaste for, and resent it as an outrage to their feelings ; as a religious bigot, when charged with disregarding the religious feelings of others, has been known to retort that they disregard his feelings by persisting in their abominable worship or creed."

MASSACHUSETTS.

[General Statutes of Massachusetts, chapter 98, page 519.]

Secular
employments
prohibited on
Sunday.

SECTION 2. Whoever on the Lord's day keeps open his shop, warehouse, or workhouse, or does any manner of labor, business, or work, except works of necessity and charity, or takes part in any sport, game, or play, or, except as allowed or prohibited in the preceding section, is present at any dancing or public diversion, show, game, or entertainment, shall be punished by fine not exceeding fifty dollars for each offense; but nothing in this section shall be held to prohibit the manufacture and distribution of steam, gas, or electricity for illuminating purposes, heat, or motive power, nor the distribution of water for fire or domestic purposes, nor the use of the telegraph or the telephone, nor the retail sale of drugs and medicines, nor articles ordered by the prescription of a physician, nor mechanical appliances used by physicians or surgeons, nor the letting of horses and carriages, nor the letting of yachts and boats, nor the running of steam ferryboats on established routes, or street railway cars, nor the preparation, printing, and publishing of newspapers, nor the sale and delivery of newspapers, nor the retail sale and delivery of milk, nor the transportation of milk, nor the making of butter and cheese, nor the keeping open of public bath houses, nor the making or selling by bakers or their employees of bread or other food usually dealt in by them before ten of the clock in the morning and between the hours of four of the clock and half-past six of the clock in the evening; *Provided, however*, that this section shall not apply to sales by bakers, between the hours of six and ten of the clock in the forenoon and four and half-past six of the clock in the afternoon, of bread and other articles of food usually dealt in by them.

Public en-
tertainments
prohibited on
Sunday.

Penalties.

SECTION 4.¹ Whoever, keeping a house, shop, cellar, or place of public entertainment or refreshment, entertains therein on the Lord's day any persons other than travelers, strangers, or lodgers, or suffers such persons on said day to abide or remain therein, or in the yards, orchards, or fields appertaining to the same, drinking or spending their time idly or at play, or in doing any secular business, shall be punished by a fine not exceeding fifty dollars for each person so entertained or suffered so to abide or remain; and upon any conviction after the first, by fine not exceeding one hundred dollars; and if convicted three times, he shall thereafter be incapable of holding a license.

Loafing
prohibited.

Penalty.

SECTION 5. No person licensed to keep a place of public entertainment shall entertain or suffer to remain or be in his house, yard, or other places appurtenant, any persons other than travelers, strangers, or lodgers in such house, drinking and spending their time there, on the Lord's day, or the evening preceding the same; and every such innholder or other person so offending shall be punished by fine not exceeding five dollars for each offense.

¹ Section three was repealed June 9, 1887.

SECTION 6. No person shall serve or execute any civil process on the Lord's day; but such service shall be void, and the person serving or executing such process shall be liable in damages to the party aggrieved in like manner as if he had no such process.

Civil
processes
served on
Sunday void.

SECTION 7. Whoever on the Lord's day behaves rudely or indecently within the walls of any house of public worship, shall be punished by fine not exceeding ten dollars.

Sunday
misbehavior
prohibited.

SECTION 8. Prosecutions for penalties incurred under the preceding provisions of this chapter shall be instituted within six months after the offense is committed.

SECTION 9. All sheriffs, grand jurors, and constables shall inquire into and inform of all offenses against the preceding provisions of this chapter, and cause the same to be carried into effect.

SECTION 10. Whoever on the Lord's day discharges any firearm for sport or in the pursuit of game, shall be punished by fine not exceeding ten dollars.

Sunday
shooting
prohibited.

SECTION 11. Whoever attempts to take or catch any fish on the Lord's day, by using any hook, line, net, spear, or other implement, shall be punished by fine not exceeding ten dollars.

SECTION 12. All prosecutions under the two preceding sections shall be instituted within thirty days from the time the offense was committed.

SECTION 13. Whoever conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business and labor on that day, shall not be liable to the penalties of this chapter for performing secular business, travel, or labor on the Lord's day, if he disturbs no other person.¹

Sabbatarians
exempted.

SECTION 14. Any innholder, common victualer, or person keeping or suffering to be kept in any place occupied by him implements such as are used in gaming, in order that the same may be for hire, gain, or reward, or be used for purposes of amusement, who on the Lord's day uses or suffers to be used any implements of that kind upon any part of his premises, shall for the first offense forfeit a sum not exceeding one hundred dollars, or be imprisoned in the house of correction not exceeding three months; and for every subsequent offense shall be imprisoned in the house of correction for a term not exceeding one year; and in either case shall further recognize, with sufficient sureties, in a reasonable sum for his good behavior, and especially that he will not be guilty of any offense against the provisions of this section for the space of three months then next ensuing.

Renting
gaming im-
plements on
Sunday pro-
hibited.

Penalties.

¹This expression, like many others running through our Sunday laws, points directly to the religious feature of the law. The Sabbatarian is allowed to work "if he disturbs no other person;" but the nullifidian is not, according to this law, allowed to work, even if he does not disturb any one. In other words, the law intends to *compel all to observe some Sabbath*;—the day of the dominant cult if they will, but if not, then of some minor sect! It would never do to allow the unbeliever, as we do the Christian, to use his time as he wills,—no, never! he *must* pay homage to some religion!

Sunday laws
religious.

Sunday
to be duly
regarded.

SECTION 15. The Board of Railroad Commissioners may authorize the running of such steamboat lines, and upon any railroad of such trains, on the Lord's day as, in the opinion of the board, the public necessity and convenience may require, having regard to the due observance of the day.

SECTION 16. The Lord's day shall be deemed to include the time from midnight to midnight.

[Public Statutes of Massachusetts, chapter 203, page 1152.]

SECTION 104. Whoever is discovered in the act of wilfully injuring a fruit or forest tree, or committing any kind of malicious mischief on the Lord's day, may be arrested by a sheriff, deputy-sheriff, constable, watchman, police officer, or other person, and lawfully detained by imprisonment in the jail or otherwise until a complaint can be made against him for the offense, and he be taken upon a warrant issued upon such complaint; but such detention without warrant shall not continue more than twenty-four hours.

[Act of February 27, 1884, chapter 37.]

Be it enacted, etc., as follows:

SECTION 1. The provisions of chapter ninety-eight of the Public Statutes relating to the observance of the Lord's day shall not constitute a defense to an action for a tort or injury suffered by a person on that day.

MICHIGAN.

[Howell's Annotated Statutes, volume i, page 543 *et seq.*, chapter 54, sections 2015-2022.]

OBSERVANCE OF THE FIRST DAY OF THE WEEK, AND THE PREVENTION AND PUNISHMENT OF IMMORALITY.

Provision
for Sunday
observance.

SECTION 1. No person shall keep open his shop, warehouse, or workhouse, or shall do any manner of labor, business, or work, or be present at any dancing, or at any public diversion, show, or entertainment, or take part in any sport, game, or play on the first day of the week. The foregoing provisions shall not apply to works of necessity and charity, nor to the making of mutual promises of marriage, nor to the solemnization of marriages. And every person so offending shall be punished by fine not exceeding ten dollars for each offense.

Penalty.

Enter-
tainment of
loafers pro-
hibited.

SECTION 2. No tavern-keeper, retailer of spirituous liquors, or other person keeping a house of public entertainment, shall entertain any persons, not being travelers, strangers, or lodgers in his house, on the said first day of the week, or shall suffer any such person on said day to abide or remain in his house, or in the buildings, yards, or orchards, or fields appertaining to the same, drinking, or spending their time idly, or at play, or in doing any secular business.

Penalty.

SECTION 3. Every person offending against any of the provisions of the last preceding section, shall be punished by a fine not exceeding five

dollars for each person so entertained, or suffered so to abide or remain ; and upon any conviction after the first, such offender shall be punished by a fine not exceeding ten dollars ; and if convicted three times, he shall be afterwards incapable of holding a license ; and every person so abiding or drinking shall be punished by a fine not exceeding five dollars.

Penalties.

SECTION 4. No person shall be present at any game, sport, play, or public diversion, or resort to any public assembly, excepting meetings for religious worship or moral instruction, or concerts of sacred music, upon the evening of the said first day of the week ; and every person so offending shall be punished by a fine not exceeding five dollars for each offense.

Persons to attend religious meetings only.

SECTION 5. No person shall serve or execute any civil process from midnight preceding to midnight following the said first day of the week ; but such service shall be void, and the person serving or executing such process shall be liable in damages to the party aggrieved, in like manner as if he had not had any such process.

SECTION 6. If any person shall, on the said first day of the week, by rude and indecent behavior, or in any other way, intentionally interrupt or disturb any assembly of people met for the purpose of worshipping God, he shall be punished by a fine not less than two nor more than fifty dollars, or by imprisonment in the county jail not exceeding thirty days.

Indecent behavior prohibited on Sunday.

SECTION 7. No person who conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business and labor on that day, shall be liable to the penalties provided in this chapter, for performing secular business or labor on the said first day of the week, provided he disturb no other person.

Sabbatarians exempted.

SECTION 8. For the purposes of the provisions of this chapter, the said first day of the week shall be understood to include all the time between the midnight preceding and the midnight following the said day ; and no prosecution for any fine or penalty incurred under any of the preceding provisions of this chapter shall be commenced after the expiration of three months from the time when the offense shall have been committed.

[Howell's Annotated Statutes, volume ii, sections 7088-7090.]

RELATIVE TO SUITS AGAINST SEVENTH-DAY OBSERVERS.

SECTION 1. *The people of the State of Michigan enact*, That no person who conscientiously believes the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business and labor on that day, shall be compelled to defend any civil suit in the justice's courts of this State on that day.

Relative to suits against Sabbatarians.

SECTION 2. Whenever any person, as aforesaid, shall be served with any process returnable on the seventh day of the week, such person may

Relative to
suits against
Sabbatarians.

make affidavit before any person authorized to administer oaths, setting forth the fact that a summons has been issued, naming the day when the same was issued, when returnable, by whom issued, and in whose favor, and against whom the same was issued; and also that said affiant conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and that the said affiant actually refrains from secular business and labor on said day, and may at any time after service of such process, and before the return day thereof, file such affidavit with the justice before whom said cause shall be pending.

SECTION 3. It shall be the duty of any justice of the peace before whom any cause shall be pending, in which such affidavit shall be filed regularly, to call such cause on the return day thereof, as in other cases, and upon his own motion to adjourn the same without pleadings, to such time as he shall see fit; *Provided*, the same shall not be adjourned to the seventh or the first day of the week; *And provided also*, that the said cause shall not be so adjourned more than ten days, for the cause aforesaid.

MINNESOTA.

[General Statutes of the State of Minnesota, 1888, volume ii, title 10, page 984, chapter 1.]

THE SABBATH.

Sabbath-
breaking.

SECTION 222. The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community.

SABBATH-BREAKING.

SECTION 223. A violation of the foregoing prohibition is Sabbath-breaking.

"DAY" DEFINED.

SECTION 224. Under the term "day," as employed in the phrase "first day of the week," when used in this chapter, is included all the time from midnight to midnight.

SERVILE LABOR.

Secular
labor pro-
hibited on
Sunday.

SECTION 225. All labor on Sunday is prohibited, excepting the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for good order, health, or comfort of the community; *Provided, however*, that keeping open a barber-shop on Sunday for the purpose of cutting hair and shaving beards shall not be deemed a work of necessity or charity.

PERSONS OBSERVING ANOTHER DAY AS A SABBATH.

Exemption
clause.

SECTION 226. It is a sufficient defense to a prosecution for servile labor on the first day of the week that the defendant uniformly keeps another day of the week as holy time, and does not labor upon that day,

and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

Sunday disturbances prohibited.

PUBLIC SPORTS.

SECTION 227. All shooting, hunting, fishing, playing, horse-racing, gaming, or other public sports, exercises, or shows, upon the first day of the week, and all noise disturbing the peace of the day, are prohibited.

Public sports prohibited.

TRADES, MANUFACTURES, AND MECHANICAL EMPLOYMENTS.

SECTION 228. All trades, manufactures, and mechanical employments upon the first day of the week are prohibited, except that when the same are works of necessity, they may be performed on that day in their usual and orderly manner, so as not to interfere with the repose and religious liberty of the community.

Trades, etc., prohibited.

PUBLIC TRAFFIC.

SECTION 229. All manner of public selling, or offering for sale, of any property upon Sunday is prohibited, except that articles of food may be sold and supplied at any time before ten o'clock in the morning, and except also that meals may be sold to be eaten on the premises where sold, or served elsewhere by caterers; and prepared tobacco in places other than where spirituous or malt liquors or wines are kept or offered for sale, and fruit, confectionery, newspapers, drugs, medicines, and surgical appliances may be sold in a quiet and orderly manner at any time of the day.

Trafficking prohibited.

SERVING PROCESS ON SUNDAY PROHIBITED.

SECTION 230. All service of legal process of any kind whatever upon the first day of the week, is prohibited, except in cases of breach of the peace, or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or except where such service is specially authorized by statute.

Serving legal processes prohibited.

PUNISHMENT OF SABBATH-BREAKING.

SECTION 231. Sabbath-breaking is a misdemeanor, punishable by a fine not less than one dollar nor more than ten dollars, or by imprisonment in a county jail not exceeding five days, or by both.

Penalty.

MISSISSIPPI.

[Revised Code of Mississippi, 1880, chapter 77, page 769.]

SECTION 2949. VIOLATION OF SABBATH. If any person, on a Sabbath day, commonly called Sunday, shall himself be found laboring at his own, or any other trade, calling, or business, or shall employ his apprentice, or servant, in labor or other business, except it be in the ordinary household offices of daily necessity, or other work of necessity or charity, he shall, on conviction, be fined not more than twenty dollars, for every offense, deeming every apprentice or servant, so employed, as

Sunday labor prohibited.

Exceptions. constituting a distinct offense ; *Provided*, that nothing in* this section shall apply to railroads, or steamboat navigation in this State.

Sunday
trafficking
prohibited.

SECTION 2950. No merchant, shopkeeper, or other person, except apothecaries and druggists, shall keep open store, or dispose of any wares or merchandise, goods or chattels, on Sunday, or sell or barter the same ; and every person so offending shall, on conviction, be fined not more than twenty dollars for every such offense.

Sunday
amusements
prohibited.

SECTION 2951. If any person shall show forth, exhibit, act, represent, or perform, or cause to be shown forth, acted, represented, or performed, any interludes, farces, or plays of any kind, or any games, tricks, juggling, sleight-of-hand, or feats of dexterity, agility of body, or any bear-baiting, or any bull-baiting, horse-racing, or cock fighting, or any such like show or exhibition whatsoever, on Sunday, every person, so offending, shall be fined not more than fifty dollars.

SECTION 2952. If any person shall be found hunting with a gun or with dogs on the Sabbath, or fishing in any way, he shall, on conviction thereof, be fined not less than five, nor more than twenty dollars.

Sunday
saloons pro-
hibited.

SECTION 2953. It shall not be lawful for any person having license to sell vinous or spirituous liquors, to keep open the bar, or place where such liquors are sold, or to sell any such liquors, on the first day of the week, commonly called Sunday ; and any person so offending shall be liable to a fine of not less than fifty nor more than one hundred dollars for each offense.

MISSOURI.

[Revised Statutes of the State of Missouri, 1889, volume i, chapter 47, page 919.]

Laboring
on Sunday a
misdemeanor.

SECTION 3852. SABBATH-BREAKING. Every person who shall either labor himself, or compel or permit his apprentice or servant, or any other person under his charge or control, to labor or perform any work other than the household offices of daily necessity, or other works of necessity or charity, or shall be guilty of hunting game or shooting on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding fifty dollars.

Penalty.

Exceptions.

SECTION 3853. LAST SECTION CONSTRUED. The last section shall not extend to any person who is a member of a religious society by whom any other than the first day of the week is observed as a Sabbath, so that he observe such Sabbath, nor to prohibit any ferrymen from crossing passengers on any day of the week, nor shall said last section be extended or construed to be an excuse or defense in any suit for the recovery of damages or penalties from any person, company, or corporation voluntarily contracting or engaging in business on Sunday.

Horse-
racing on
Sunday a
misdemeanor.

SECTION 3854. HORSE-RACING ON SUNDAY. Every person who shall be convicted of horse-racing, cock fighting, or playing at cards or games of any kind, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding fifty dollars.

SECTION 3855. SELLING GOODS ON SUNDAY. Every person who shall expose to sale any goods, wares, or merchandise, or shall keep open any ale or porter house, grocery, or tippling-shop, or shall sell or retail any fermented or distilled liquor on the first day of the week, commonly called Sunday, shall, on conviction, be adjudged guilty of a misdemeanor, and fined not exceeding fifty dollars.

Trafficking
on Sunday a
misdemeanor.

SECTION 3856. LAST SECTION CONSTRUED. The last section shall not be construed to prevent the sale of any drugs or medicines, provisions, or other articles of immediate necessity.

Exceptions.

MONTANA.

[Compiled Statutes of Montana, 1887, page 1039.]

LORD'S DAY.

SECTION 1406. Hereafter it shall be unlawful for any person or persons to keep open any play-house, theater, dance-house, hurdy-gurdy-house, prize-ring, or race-grounds on the first day of the week, commonly called the Lord's day.

Places of
amusement
prohibited on
Sunday.

SECTION 1407. Hereafter it shall be unlawful for any person or persons to keep open any house or other habitation wherein any game of chance is played, or open any banking game at cards on the first day of the week, commonly called the Lord's day.

Gaming-
houses pro-
hibited on
Sunday.

SECTION 1408. If any person or persons shall violate the provisions of this chapter, they shall be deemed guilty of a misdemeanor, and, upon conviction thereof, before any court having competent jurisdiction, shall be fined in any sum not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail not less than one nor more than thirty days for such offense, or by both such fine and imprisonment, and shall be adjudged to pay all costs of such prosecution.

Penalty.

SECTION 1409. Justices of the peace shall have jurisdiction in all cases arising under the provisions of this chapter.

Jurisdiction.

SECTION 1410. All fines collected under this chapter shall be paid into the county treasury of the county where such conviction was had, and shall be for the benefit of the common schools of said county.

NEBRASKA.

[Compiled Statutes of the State of Nebraska, 1885, chapter 23, page 803, and chapter 50, page 415.]

SABBATH-BREAKING.

SECTION 241. If any person of the age of fourteen years or upward, shall be found on the first day of the week, commonly called Sunday, sporting, rioting, quarreling, hunting, fishing, or shooting, he or she shall be fined in a sum not exceeding twenty dollars, or be confined in the county jail for a term not exceeding twenty days, or both, at the discretion of the court. And if any person of the age of fourteen years or

Acts pro-
hibited on
Sunday.

Penalty.

Secular
labor pro-
hibited.

Sabbatarians
exempted.

Restrictions
on the liquor
traffic.

Sunday
amusements
prohibited.

Enforce-
ment of Sun-
day as a *dies*
non.

Penalty.

Jurisdiction.

upward shall be found on the first day of the week, commonly called Sunday, at common labor (work of necessity and charity only excepted), he or she shall be fined in any sum not exceeding five dollars nor less than one dollar; *Provided*, nothing herein contained in relation to common labor on said first day of the week, commonly called Sunday, shall be construed to extend to those who conscientiously do observe the seventh day of the week as the Sabbath, nor to prevent families emigrating from traveling, watermen from landing their passengers, superintendents or keepers of toll-bridges or toll-gates from attending and superintending the same, or ferrymen from conveying travelers over the water, or persons moving their families on such days, or to prevent railroad companies from running necessary trains.

ELECTION DAYS — SUNDAYS.

SECTION 14. Every person who shall sell or give away any malt, spirituous, and vinous liquors on the day of any general or special election, or at any time during the first day of the week, commonly called Sunday, shall forfeit and pay for every such offense, the sum of one hundred dollars.

NEVADA.

[General Statutes of Nevada, 1885, page 1077.]

AN ACT FOR THE BETTER OBSERVANCE OF THE LORD'S DAY.

SECTION 4847. No person shall keep open any play-house or theater, race ground, cock pit, or play at any game of chance for gain, or engage in any noisy amusement, on the first day of the week, commonly called the Lord's day.

SECTION 4848. No judicial business shall be transacted by any court except deliberations of a jury who have received a case on a week day, so-called, and who may receive further instructions from the court, at their request, or deliver their verdict; nor any civil process be served by any certifying or attesting officer, or any record made by any legally appointed or elected officer, upon the first day of the week, commonly called the Lord's day; *Provided*, that criminal process may issue for the apprehension of any person charged with crime, and criminal examination be proceeded with.

SECTION 4849. Any person or persons violating the provisions of the two preceding sections of this act shall be punished, on conviction thereof, by a fine of not less than thirty dollars nor more than two hundred and fifty dollars, for each offense.

SECTION 4850. Justices of the peace may have jurisdiction of all complaints arising under the aforesaid act.

SECTION 4851. On complaint of any person, before a justice of the peace, the person or persons found guilty of any offenses specified in this act shall be fined as aforesaid, to be paid to the treasurer of the

territory, for the benefit of common schools; and the offender shall, in addition to the said fine and the costs of prosecution, give bonds, with two good and sufficient sureties, in the sum of not less than two hundred dollars nor more than five hundred dollars, for good behavior during any time within the discretion of the court, and stand committed until the whole order is complied with, and the fine be paid.

Penalties.

NEW HAMPSHIRE.

[General Laws of New Hampshire, 1878, chapter 273, page 617.]

SECTION 3. No person shall do any work, business, or labor of his secular calling, to the disturbance of others, works of necessity and mercy excepted, on the first day of the week, commonly called the Lord's day; nor shall any person use any play, game, or recreation on that day or any part thereof.

Secular labor prohibited.

This section shall not be construed to prevent necessary repairs in mills and factories, which could not be made on a week day without throwing many operatives out of employment.

SECTION 4. No person shall, on the Lord's day, within the walls of any house of public worship or near the same, behave rudely or indecently, either in the time of public service or between the forenoon and afternoon services.¹

Rude behavior prohibited on Sunday.

SECTION 5. Any person offending against any provision of the laws of the last two preceding sections of this chapter, shall forfeit a sum not exceeding six dollars, which shall be recovered by any selectman or police officer, for the use of the town.

Penalty.

SECTION 10. No person shall keep open his shop, warehouse, cellar, restaurant, or workshop, for the reception of company, or shall sell or expose for sale any merchandise whatsoever on the first day of the week, commonly called the Lord's day; but this section shall not be construed to prevent the entertainment of boarders, or the sale of milk, bread, and other necessities of life, or drugs and medicines.

Sunday entertainments prohibited.

[Laws of the State of New Hampshire, passed June Session, 1887, chapter 8, page 412.]

AN ACT TO PREVENT HUNTING AND THE DISCHARGE OF FIRE-ARMS ON THE LORD'S DAY.

SECTION 1. Whoever on the Lord's day discharges any fire-arms for sport or in the pursuit of game, and whoever on the Lord's day shall carry any fire-arms in any field, highway, or private way, while in the pursuit of game, or with intent to discharge the same in sport, shall be punished by a fine not exceeding ten dollars.

Sunday shooting prohibited

¹The injustice and favoritism of Sunday laws are evident from this and similar provisions in our Sunday statutes. Persons are prohibited from behaving "rudely or indecently" "within the walls of any house of public worship, or near the same" *on the Lord's day!* Why not, pray, on *every* day of the week? Are we to conclude that persons who hold meetings on other days are to be without protection?

NEW JERSEY:

[Revision of the Statutes of New Jersey, 1877, page 1227.]

VICE AND IMMORALITY.

Worldly
diversions
prohibited
on Sunday.

Penalty.

Trafficking
prohibited.

Sports
prohibited.

SECTION 1. That no traveling, worldly employment, or business, ordinary or servile labor or work, either upon land or water (works of necessity and charity excepted), nor shooting, fishing (not including fishing with a seine or net, which is hereafter provided for), sporting, hunting, gunning, racing, or frequenting of tippling-houses, or any interludes or plays, dancing, singing, fiddling, or other music for the sake of merriment, nor any playing at foot-ball, fives, nine-pins, bowls, long-bullets, or quoits, nor any other kind of playing, sports, pastimes, or diversions, shall be done, performed, used, or practiced by any person or persons within this State, on the Christian Sabbath, or first day of the week, commonly called Sunday ; and that every person, being of the age of fourteen years or upwards, offending in the premises, shall for every such offense forfeit and pay to the use of the poor of the township in which such offense shall be committed, the sum of one dollar ; and that no person shall cry, show forth, or expose to sale, any wares, merchandise, fruit, herbs, meat, fish, goods, or chattels, upon the first day of the week, commonly called Sunday, or sell or barter the same, upon pain that every person so offending shall forfeit and pay to the use of the poor of the township where such offense shall be committed, the sum of two dollars ; and if any person offending in any of the premises shall be thereof convicted before any justice of the peace for the county where the offense shall be committed, upon the view of the said justice, or confession of the party offending, or proof of any witness or witnesses upon oath or affirmation, then the said justice before whom such conviction shall be had, shall direct and send his warrant, under his hand and seal, to some constable of the county where the offense shall have been committed, commanding him to levy the said forfeitures or penalties by distress and sale of the goods and chattels of such offenders, and to pay the money therefrom arising to the overseers of the poor of the township where the said offense or offenses shall have been committed, for the use of the poor thereof ; and in case no such distress can be had, then every such offender shall, by warrant under the hand and seal of the said justice, be committed to the county jail of the said county, or to the jail of any city or town corporate within the same, for a term not exceeding ten days, to be certainly expressed in said warrant ; *And further*, that if any person shall be found fishing, sporting, playing, dancing, fiddling, shooting, hunting, gunning, traveling, or going to or returning from any market or landing with carts, wagons, or sleds, or behaving in a disorderly manner, on the first day of the week, called Sunday, it shall be lawful for any constable, or other citizen, to stop every person so offending, and to detain him or her till the next day, to be dealt with accord-

ing to law ; *Provided always*, that no person going to or returning from any church or place of worship, within the distance of twenty miles, or going to call a physician, surgeon, or midwife, or carrying mail to or from any post-office, or going express by order of any public officer, shall be considered as traveling within the meaning of this act ; *And provided also*, that nothing in this act contained shall be construed to prohibit the dressing of victuals in private families, or in lodging-houses, inns, and other houses of entertainment for the use of sojourners, travelers, or strangers ; *And provided further*, that it shall and may be lawful for any railroad company in this State to run one passenger train each way over their roads on Sunday for the accommodation of the citizens of this State.

Exceptions.

SECTION 2. No person shall on the first day of the week, called Sunday, cast, draw, or make use of any seine or net, for the purpose of catching fish in any pond, lake, stream, or river, within the territorial limits or jurisdiction of this State, or be aiding or assisting therein ; and every person offending in the premises shall, on being thereof convicted before any justice of the peace for the county where the offense shall be committed, upon the view of the said justice, or confession of the party offending, or proof of any witness or witnesses upon oath or affirmation, forfeit and pay the sum of fourteen dollars for every such offense ; and in case of non-payment of the said forfeiture, then the said justice before whom such conviction shall be had, shall direct and send his warrant, under his hand and seal, to some constable of the county in which the offense shall have been committed, commanding him to levy the said forfeiture or penalty by distress and sale of the goods and chattels of such offender, and to pay the money therefrom arising to the overseers of the poor of the township where the said offense shall have been committed, for the use of the poor thereof ; and for want of goods and chattels whereby to make such distress, to convey the body of the said offender to the common jail of the county, or the jail of any city or town corporate within the same, there to remain in safe custody until the said forfeiture, with the costs of prosecution, shall be fully paid, or until such offender shall be delivered by due course of law.

Sunday
fishing pro-
hibited.

Penalty.

SECTION 3. If any stage or stages shall be driven through any part of this State on the first day of the week, called Sunday, except sufficient reason shall be offered to show that it be done in cases of necessity or mercy, or in case of carrying the mail to or from any post-office, the driver or drivers, proprietor, or proprietors of such stage or stages, shall, on being thereof convicted before any justice of the peace for the county where the offense shall be committed, upon the view of the said justice, or confession of the party offending, or testimony of any witness or witnesses, forfeit and pay the sum of eight dollars for every such offense ; and in case of non-payment of the said forfeiture or penalty, then the same shall be levied, recovered, and applied in the manner and form prescribed in and by the second section of this act ; and every justice of

Sunday
stages pro-
hibited.

Penalty.

Duties
of justices.

the peace in this State is hereby empowered and required, upon his personal knowledge or view or other due information, of any stage or stages being driven or run through any part of this State as aforesaid, to stop and detain the same, or order and direct the same to be stopped and detained, at the cost and expense of the proprietor or proprietors of such stage or stages, until the following day, and then to be dealt with as hereinbefore is directed.

Sunday
traveling
prohibited.

SECTION 4. No wagoner, carrier, drayman, drover, butcher, or any of his or their servants, shall ply or travel with his or their wagons, carts, or drays, or shall load or unload any goods, wares, merchandise, or produce, or drive cattle, sheep, or swine in any part of the State, on the first day of the week, called Sunday, under the penalty of two dollars for every offense, to be levied, recovered, and applied in the manner and form prescribed in the second section of this act.

Penalty.

Freight
transportation
prohibited.

SECTION 13. No transportation of freight, excepting milk, on any public highway, railroad, or canal, shall be done or allowed by any person or persons within this State, on the first day of the week, commonly called the Christian Sabbath ; *Providing*, that nothing in this act contained shall be construed so as to prevent the transportation of the United States mail by railroad or on the public highways, or to the regular trips of ferry-boats within the State or between this and another State.

Disturbance
of meetings
prohibited on
Sunday.

SECTION 17. If any person or persons shall disturb or interrupt any religious meeting, as aforesaid, on the first day of the week, called Sunday, it shall be lawful for any constable or member of the meeting, and a citizen or freeholder as aforesaid, to apprehend such person or persons immediately, and detain him or them until the next day, then to be dealt with according to law, unless said offender or offenders shall give sufficient security before some magistrate, to appear at any time and place that he may direct, to answer the charge preferred against him or them, in which case it shall be lawful for said magistrate to discharge such offender or offenders.

SECTION 23. No person shall be prosecuted or troubled for any offense against this act, unless the same be proved or prosecuted within thirty days after the commission of such offense.

SECTION 24. If any suit or action shall be commenced or brought against any justice of the peace, constable, or other officer or person whatsoever, for doing, or causing to be done, anything in pursuance of this act, concerning any of the said offenses, the defendant in such action or suit may plead the general issue, and give the special matter in evidence ; and if, in any such action or suit, a verdict shall be given for the defendant, or the plaintiff become nonsuit, or discontinue his action, then the defendant shall have treble costs.

SECTION 25. In every complaint or information which shall be made or brought before any justice of the peace, under and by virtue of this act, it shall and may be lawful for the person charged in such complaint or information, after he has appeared thereto, and before the said jus-

tice has proceeded to inquire into the merits of the said complaint or information, to demand a trial by jury ; and thereupon a venire shall be issued to summon a jury of six men to try whether the said person so charged is guilty or not guilty of the offense charged against him in said complaint or information ; it shall be the duty of the said justice to issue the said venire, and to direct a return thereof to be to him made, and to proceed therein as in other cases of trials by jury ; *Provided*, that the costs of the justice and constable upon the said venire, and costs of the said jury, and of swearing and attending the same, shall in all cases be paid by the person demanding the said jury ; *And provided also*, that this act shall not extend to any case in which any justice of the peace is authorized by this act to convict upon his own view or personal knowledge.

Jury
demandable.

SECTION 29. Every person being of the age of fourteen years or upwards, offending in the premises, shall for every such offense forfeit and pay to the use of the public schools of the township where such offense shall be committed, the sum of twenty dollars ; and if any person offending in any of the premises shall be thereof convicted before any justice of the peace for the county where the offense shall be committed, upon the view of the said justice, or confession of the party offending, or proof of any witness or witnesses, or oath or affirmation, then the said justice before whom the said conviction shall be had, shall direct and send his warrant, under his hand and seal, to some constable of the county where the offense shall have been committed, commanding him to levy the said penalty or penalties, by distress and sale of the goods and chattels of such offender, and to pay the money therefrom arising to the collector of the township where the offense or offenses shall have been committed, for the use of the public schools thereof.

Penalties.

SECTION 30. In case no such distress can be had, then every such offender shall, by warrant under the hand and seal of the said justice, be committed to the common jail of the said county, city, or town corporate, within the same, for a term not exceeding ten days, to be certainly expressed in said warrant.

Imprison-
ment.

SECTION 31. Every justice of the peace in this State is hereby empowered and required, upon his personal knowledge or view, or other due information, of any canal-boat, or railroad car transporting freight through any part of this State, as aforesaid, he shall be authorized and required to stop and detain the same, or order the same to be stopped and detained, at the cost and expense of the proprietor or proprietors of such canal-boat or railroad car, until the following day, and then to be dealt with as hereinbefore is directed.

Duties of
justices.

SECTION 32. This shall apply also to cattle, sheep, and hogs being driven to market on the Sabbath day.

SECTION 33. Every inhabitant of this State who religiously observes the seventh day of the week as the Sabbath, shall be exempt from answering to any process, in law or equity, either as defendant, witness, or juror, except in criminal cases ; likewise from executing, on the said

Sabbatarians
exempted.

Exemption
of Sabbata-
rians from gov-
ernment work
on Saturday.

day, the duties of any post or office to which he may be appointed or commissioned, except when the interest of the State may absolutely require it, and shall also be exempt from working on the highways and doing any militia duty on that day, except when in actual service.

Restrictions
on Sabba-
tarians.

SECTION 34. If any person, charged with having labored or worked in the first day of the week, commonly called Sunday, shall be brought before a justice of the peace to answer the information and charge thereof, and shall then and there prove, to the satisfaction of the said judge, that he or she uniformly keeps the seventh day of the week as the Sabbath, and habitually abstains from following his or her usual occupation or business, and from all recreation, and devotes the day to the exercise of religious worship, then such defendant shall be discharged; *Provided always*, that the work or labor for which such person is informed against, was done and performed in his or her dwelling-house or work-shop, or on his or her premises or plantation, and that such work or labor has not disturbed other persons in the observance of the first day of the week as the Sabbath; *And provided also*, that nothing in this section contained shall be construed to allow any such person to openly expose to sale any goods, wares, merchandise, or other article or thing whatsoever in the line of his or her business or occupation.

[Supplement to the Revision of the Statutes of New Jersey, 1886, page 956.]

Railroad
work pro-
hibited.

58. SECTION 2. That within the limits of the said premises the said board of trustees, directors, managers, commissioners, or other corporate authorities shall have power, by ordinance or otherwise, to regulate and restrain the running of any railroad train, locomotive, or cars upon any railroad track within said premises upon the first day of the week, commonly called Sunday, and if any corporation, person, or individual shall, without the written consent of the said trustees, directors, managers, commissioners, or other corporate authorities, run, operate, or cause to be run or operated over any railroad track within said premises, any railroad train, locomotive, or cars, whether operated by steam, horse, or other power, upon the first day of the week, commonly called Sunday, such corporation, individual, or person so offending shall forfeit and pay to the said trustees, directors, managers, commissioners, or other corporate authorities, for each and every of the said acts, the sum of five hundred dollars, to be recovered with costs of the suit by the said trustees, directors, managers, commissioners, or other corporate authorities in an action of trespass on the case, in the circuit court of the county in which such act was committed; in said action it shall be sufficient to declare general, and give notice of special matter, and execution may ensue thereon as in other cases; one half of any penalty thus collected shall, after deducting costs of collection, be paid to the overseer of the poor of the county or township wherein such act was committed; *Provided*, that this act shall not prevent the running of any railroad train, locomotive, or cars through said premises to any other terminal point;

Exceptions.

And provided further, that nothing in this act contained shall be construed to prevent the running of any railroad train, locomotive, or cars at any time over any railroad heretofore or hereafter constructed or located.

Exceptions.

Transportation on water prohibited on Sunday.

59. SECTION 3. That the said trustees, directors, managers, commissioners, or other corporate authorities, shall have power, by ordinance or otherwise, to regulate and restrain, within the limits of the said premises, or upon any pier or landing-place adjacent thereto, the carrying of any person by means of any boat or vessel of any kind to and from said premises, piers, or landing-place upon the first day of the week, commonly called Sunday, and to regulate and restrain the landing on said premises, by either public or private conveyance, of any person on the first day of the week, commonly called Sunday, except on errands of mercy, sickness, or death, and to regulate and restrain the manufacture and sale of tobacco in any of its forms within said premises; and if any person shall, without the written license of the said trustees, directors, managers, commissioners, or other corporate authorities first obtained, commit any of the acts in this section named, he shall forfeit and pay to the said trustees, directors, managers, commissioners, or other corporate authorities a penalty of five dollars for each and every offense, and for each and every person so landed or carried, to be recovered, with costs of prosecution, in the same manner and by the same proceedings as are mentioned and described in the first section of this act.

60. SECTION 4. That nothing in this act contained shall be construed as in any way limiting or abridging any of the rights, powers, and privileges conferred by the act to which this is a supplement, or by other acts, upon any board of trustees, directors, commissioners, or other corporate authorities of any incorporated camp meeting association or sea-side resort.

NEW MEXICO.

[Compiled Laws of New Mexico, 1884, title 9, chapter 5.]

SABBATH OBSERVANCE.

SECTION 933. (a) Any person or persons who shall be found on the first day of the week, called Sunday, engaged in any sports, or in horse-racing, cock fighting, or in any other manner disturbing any worshipping assembly or private family, or attending any public meeting or public exhibition, excepting for religious worship or instruction, or engaged in any labor, except works of necessity, charity, or mercy, shall be punished by a fine not exceeding fifteen dollars nor less than five dollars, or imprisonment in the county jail of not more than fifteen days nor less than five days, in the discretion of the court, upon conviction before any district court.

Sunday amusements prohibited.

Penalty.

(b) All fines collected under this act to be applied to the school fund of the district in which the offense was committed. It shall be the duty

Disposition of fines.

Payment
of fines.

of any sheriff collecting said fine to pay the same to the county treasurer, to the credit of the school district of the county in which the said offense was committed, within thirty days after collecting said fine, and take his receipt therefor.

934. It shall be lawful in cases of necessity for farmers and gardeners to irrigate their lands, and when necessary to preserve the same, to remove grain and other products from the fields on said day; and nothing in this act shall be construed to prevent cooks, waiters, and other employees of hotels and restaurants, and of butchers and bakers, from performing their duties on said day.

936. Sunday, for the purposes of this act, shall be regarded as the time between sunrise and midnight of said day.

NEW YORK.

[Revised Statutes of New York, 1889, volume ii, part 1, chapter 20, pages 2232, 2361.]

Acts pro-
hibited on
Sunday.

SECTION 21. No inn-, tavern-, or hotel-keeper, or other person, shall sell or give away intoxicating liquors or wines on Sunday,¹ or upon any day on which a general or special election or town-meeting shall be held, in any of the villages, cities, or towns of this State, to any person whatever, as a beverage. In case the election or town-meeting shall not be general throughout the State, the provisions of this section in such case shall only apply to the city, county, village, or town in which such election or town-meeting shall be held. Whoever shall offend against the provisions of this section shall be guilty of a misdemeanor, and shall be punished for each offense by a fine not less than thirty dollars nor more than two hundred dollars, or by imprisonment not less than five days nor more than fifty days, or both such fine and imprisonment at the direction of the court.

HUNTING ON SUNDAY.

Sunday
hunting
prohibited.

SECTION 32. There shall be no shooting, hunting, trapping, or caging of birds or wild beasts, or having in possession in the open air for such purpose the implements for the shooting, hunting, trapping, or caging of the same, on the first day of the week, called Sunday, and any person violating either of the provisions of this section shall be deemed guilty of a misdemeanor, and in addition thereto, shall be liable to a penalty of twenty-five dollars for every such offense.

Sunday
laws not tem-
perance laws.

¹The "Colorado Graphic" says: "Sunday laws are not passed in the interests of temperance. They are passed in the interest of a certain class of so-called Christians, who wish to tear down the beautiful structure Christ built, to gratify their selfish, clan-nish, dogmatic reasoning. They even grossly insult fellow-Christians who oppose Sun-day legislation, and totally ignore the Hebrews. The question of Sunday observance is something with which no government, no State, no city, no town, should meddle. The observance of Sunday as a day of rest is a beautiful custom, but its enforcement at the muzzle of a national, a State, or a municipal law, is as obnoxious and uncalled for as the enforcement of church attendance or family prayers, by the same means."

Interference
with Sunday
observance
obnoxious.

[New York Penal Code.]

SECTION 265. All shooting, hunting, fishing, playing, horse-racing, gaming, or other public sports, exercises, pastimes, or shows, upon the first day of the week, and all noise disturbing the peace of the day, are prohibited.¹

Sunday
pastimes
prohibited.

NORTH CAROLINA.

[Code of North Carolina, 1883, chapter 25, page 448.]

HUNTING ON SUNDAY PROHIBITED ; PENALTY.

SECTION 1115. If any person whomsoever shall be known to hunt on the Lord's day, commonly called Sunday, with a dog or dogs, or shall be found off of his own lands on Sunday, having a shot gun, rifle, or pistol, every person so offending shall be subject to indictment ; and shall pay a fine not to exceed fifty dollars, at the discretion of the court, two thirds of such fine to inure to the benefit of the free public schools in the county of which such convict is a resident, the remainder to the informant.

Sunday
hunting
prohibited.

Penalty.

FISHING ON SUNDAY WITH SEINES OR NETS PROHIBITED ; PUNISHMENT.

SECTION 1116. It shall be unlawful for any person to fish on Sunday with a seine, drag net, or other kind of net, except such as are fastened to stakes ; and any person violating this section shall be guilty of a misdemeanor, and fined not less than two hundred nor more than five hundred dollars, or imprisoned not more than twelve months.

Certain
Sunday fish-
ing prohibited.

SALE OF INTOXICATING LIQUORS ON SUNDAY ; A MISDEMEANOR.

SECTION 1117. If any person shall sell spirituous, or malt, or other intoxicating liquors on Sunday, except on the prescription of a physician, and then only for medicinal purposes, the person so offending shall be guilty of a misdemeanor, and punished by fine or imprisonment, or both, in the discretion of the court.

¹Speaking of these laws, the New York "World" asks: "How long will the anachronism and injustice continue which compel New-Yorkers to violate some statute in order to get needed and innocent recreation on Sunday?"

How long
shall injustice
continue?

And in reference to the teaching of the Bible in the public schools, which is only another phase of the question, the "World" says: "It is simply a question of the functions of the State and the rights of men. Ours is a purely secular State, in which men of all religions and men of no religion are upon an exactly equal footing before the law. It has nothing whatever to do with creeds or with religion, except to protect all citizens alike in their perfect religious liberty. The public schools are maintained by the secular State for the secular education of the children ; their religious education is a matter with which the State has no right to concern itself. That is a matter for parents and pastors. The State has no more right to teach a religion which is held by the great majority of the people, than to teach one held by only one of all its citizens. It has no right to interfere with religion at all."

Simply a
question of
rights.A sound
principle.

This is the true American theory ; and it is the only theory that can be carried out and American institutions be preserved.

[Chapter 49, page 759.]

RAILROAD COMPANIES PROHIBITED FROM LOADING OR UNLOADING
FREIGHT CARS ON SUNDAY, AND ALSO FROM RUNNING LOCO-
MOTIVES OR CARS, EXCEPT SUCH AS SHALL BE RUN
FOR CARRYING PASSENGERS OR THE MAILS.

Sunday
railroad work
prohibited.

Exceptions.

Penalty.

SECTION 1973. No railroad company shall permit the loading or unloading of any freight car on Sunday; nor shall permit any car, train of cars, or locomotive to be run on Sunday on any railroad, except such as may be run for the purpose of transporting the United States mail, either with or without passengers, and except such as shall be run for carrying passengers exclusively, and except such as shall be run for the purpose of transporting fruits, vegetables, live stock, and perishable freights exclusively; *Provided*, that the word "Sunday" in this section shall be construed to embrace only that portion of the day between sunrise and sunset; and that trains *in transitu*, having started on Saturday, may, in order to reach the terminus or shops, run until nine o'clock A. M. on Sunday, but not later, nor for any other purpose than to reach the terminus or shops. And any railroad company violating this section shall be guilty of a misdemeanor in each county in which such car, train of cars, or locomotive shall run, or in which any such freight car shall be loaded or unloaded; and upon conviction shall be fined not less than five hundred dollars for each offense; the fine when collected to be paid to the State treasurer for the use of the public schools.

NORTH DAKOTA.

[Compiled Laws of Dakota, 1887.]

CRIMES AGAINST RELIGION.

Sunday
sacredness
enforced.

SECTION 6238. The first day of the week being by very general consent set apart for rest and religious uses, the law forbids to be done on that day certain acts deemed useless and serious interruptions of the repose and religious liberty of the community.

SECTION 6239. Any violation of this prohibition is Sabbath-breaking.

SECTION 6240. Under the term "day" as employed in the phrase "first day of the week," in the seven sections following, is included all the time from midnight to midnight.

Acts pro-
hibited on
Sunday.

SECTION 6241. The following are the acts forbidden to be done on the first day of the week, the doing any of which is Sabbath-breaking: (1) Servile labor; (2) Public sports; (3) Trades, manufactures, and mechanical employments; (4) Public traffic; (5) Serving process.

SECTION 6242. All manner of servile labor on the first day of the week is prohibited, excepting works of necessity or charity.

Exemption
clause.

SECTION 6243. It is a sufficient defense in proceedings for servile labor on the first day of the week, to show that the accused uniformly

keeps another day of the week as holy time, and does not labor upon that day, and that the labor complained of was done in such a manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

Exemption clause.

SECTION 6244. All shooting, sporting, horse-racing, gaming, or other public sports upon the first day of the week, are prohibited.

Gaming prohibited.

SECTION 6245. All trades, manufactures, and mechanical employments upon the first day of the week, are prohibited.

Secular work prohibited.

SECTION 6246. All manner of public selling, or offering, or exposing for sale publicly, of any commodities upon the first day of the week, is prohibited, except that meats, milk, and fish may be sold at any time before nine o'clock in the morning, and except that food may be sold to be eaten upon the premises where sold, and drugs and medicines and surgical appliances may be sold at any time of the day.

Trafficking prohibited.

SECTION 6247. All service of legal process of any description whatever, upon the first day of the week, is prohibited, except in cases of breach of the peace, or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or except where such service shall be specially authorized by law.

Service of legal process prohibited.

SECTION 6248. Every person guilty of Sabbath-breaking is punishable by a fine of one dollar for each offense.

Penalty.

SECTION 6249. The fines prescribed in this chapter for profane swearing and for Sabbath-breaking, may be collected in the manner prescribed by law, for the collection of debts; but no property shall be exempt from execution which has been taken to satisfy any such fines and costs.

Collection of fines.

No property exempt.

SECTION 6250. Whoever maliciously procures any process in a civil action to be served on Saturday upon any person who keeps Saturday as holy time, and does not labor on that day, or serve upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor.

Prosecution of Sabbatarians on Saturday.

OHIO.

[Revised Statutes of Ohio, volume ii, page 1733.]

SECTION 7032. Whoever, being over fourteen years of age, engages in sporting, rioting, quarreling, hunting, fishing, or shooting on Sunday, shall, on complaint made within ten days thereafter, be fined not more than twenty dollars, or imprisoned not more than twenty days, or both.

Acts prohibited on Sunday.

SECTION 7032. Whoever on the first day of the week, commonly called Sunday, participates in or exhibits to the public with or without charge for admittance, in any building, room, ground, garden, or other place in this State, any theatrical or dramatic performance of any kind or description, or any equestrian or circus performance of jugglers, acrobats, rope-dancing, sparring exhibitions, variety shows, negro min-

Public amusement prohibited.

Public
amusements
prohibited
on Sunday.

strelys, living statuary, ballooning, or any base-ball playing, or any ten-pins, or other games of similar kind or kinds, or participates in keeping any low or disorderly house of resort, or shall sell, dispose of, or give away any ale, beer, porter, or spirituous liquors in any building appendant or adjacent thereto, when any such show, performance, or exhibition is given, or houses or places are kept, he or she shall, on complaint made within twenty days thereafter, be fined in any sum not exceeding one hundred dollars, or be confined in the county jail not exceeding six months, or both, at the discretion of the court.

Penalty.

Sunday
labor pro-
hibited.

SECTION 7033. Whoever, being over fourteen years of age, engages in any labor on Sunday (works of necessity and charity excepted), shall, on complaint made within ten days thereafter, be fined not more than five dollars; but this section does not extend to those who conscientiously observe the seventh day of the week as the Sabbath,¹ nor shall it be construed so as to prevent families emigrating from traveling, watermen from landing their passengers, superintendents or keepers of toll-bridges or toll-gates from attending the same, or ferrymen from conveying travelers over waters.

Sabbatarians
exempted.

OREGON.

[Hill's Annotated Laws of Oregon, 1887, volume i, pages 957, 962.]

Acts pro-
hibited on
Sunday.

SECTION 1890. If any person shall keep open any store, shop, grocery, ball-alley, billiard-room, or tippling-house for the purpose of labor or traffic, or any place of amusement, on the first day of the week, commonly called Sunday or the Lord's day, such person, upon conviction thereof, shall be punished by a fine not less than five nor more than fifty dollars; *Provided*, that the above provision shall not apply to the keepers of drug stores, doctor shops, undertakers, livery-stable keepers, barbers, butchers, and bakers; and all circumstances of necessity and mercy may be pleaded in defense, which shall be treated as questions of fact for the jury to determine, when the offense is tried by jury.

Persons
exempted.

Sunday
liquor-selling
prohibited.

SECTION 1909. No person shall keep open any house or room in which intoxicating liquor is kept for retail, on the first day of the week, commonly called Sunday, or give, or sell, or otherwise dispose of intoxicating liquors on that day; any persons violating this section shall be fined in any sum not exceeding twenty-five nor less than ten dollars for each offense; and such fine to be for the use of common schools in the county in which the offense was committed; *Provided*, that this section, so far as it prohibits keeping open a house or room, shall not apply to tavern-keepers.

Injustice of
Sunday laws.

¹The very fact that there are those to whose consciences these Sunday laws would be a hardship if there were no exemption clause, proves that the laws themselves are unjust. Sunday laws are open to the same charge as was the Virginia religious bill of 1785. Madison said: "As the bill violates equality by subjecting some to peculiar burdens, so it violates the same principle by granting to others peculiar exemptions." If a Christian has a right to be exempted from the operation of a law on account of a difference in belief from the majority, the unbeliever has the same right; — in other words, if *one* who differs from the majority has a right to exemption, *all* have.

PENNSYLVANIA.

[Brightly's Pardon's Digest of the Laws of Pennsylvania, 1883, volume ii, pages 1371 *et seq.*, and 835.]

SUNDAY.

SECTION 3. If any person shall do or perform any worldly employment or business whatsoever on the Lord's day, commonly called Sunday (works of necessity and charity only excepted), shall use or practice any unlawful game, hunting, shooting, sport, or diversion whatsoever on the same day, and be convicted thereof, every such person so offending shall, for every such offense, forfeit and pay four dollars, to be levied by distress; or in case he or she shall refuse or neglect to pay the said sum, or goods and chattels cannot be found, whereof to levy the same by distress, he or she shall suffer six days' imprisonment in the house of correction of the proper county; *Provided always*, that nothing herein contained shall be construed to prohibit the dressing of victuals in private families, bake-houses, lodging-houses, inns, and other houses of entertainment for the use of sojourners, travelers, or strangers, or to hinder watermen from landing their passengers, or ferrymen from carrying over the water travelers, or persons removing with their families on the Lord's day, commonly called Sunday, nor to the delivery of milk or of the necessities of life, before nine of the clock in the forenoon, nor after five of the clock in the afternoon of the same day.

Secular
employment
prohibited
on Sunday.

Exceptions.

SECTION 4. *Provided always*, That every such prosecution shall be commenced within seventy-two hours after the offense shall be committed.

SECTION 5. All persons who are found drinking and tippling in ale-houses, taverns, or other public house or place, on the first day of the week, commonly called Sunday, or any part thereof, shall, for every offense, forfeit and pay one shilling and sixpence to any constable that shall demand the same, to the use of the poor; and all constables are hereby empowered, and by virtue of their office required, to search public houses and places suspected to entertain such tipplers, and them, when found, quietly to disperse; but in case of refusal, to bring the persons so refusing before the next justice of the peace, who may commit such offenders to the stocks, or bind them at their good behavior, as to him shall seem requisite. And the keepers of such ale-houses, taverns, or other public house or place, as shall countenance or tolerate any such practices, being convicted thereof, by the view of a single magistrate, his own confession, or the proof of one or more credible witnesses, shall, for every offense, forfeit and pay ten shillings, to be recovered as and for the uses above said.

Sunday
tippling
prohibited.

SECTION 6. *Provided always*, That nothing in this act be construed to prevent victualing-houses or other public house or place from supplying the necessary occasions of travelers, inmates, lodgers, or others, on the first day of the week, with victuals and drink in moderation, for refreshment

Above
section con-
strued.

only ; of which necessary occasion for refreshment, as also moderation, the magistrate before whom complaint is made, shall be judge ; any law, usage, or custom in this province to the contrary notwithstanding.

Trafficking
in liquor pro-
hibited on
Sunday.

SECTION 7. It shall not be lawful for any person or persons to sell, trade, or barter in any spirituous or malt liquors, wine, or cider, on the first day of the week, commonly called Sunday ; or for the keeper or keepers of any hotel, inn, tavern, ale-house, beer-house, or other public house or place, knowingly to allow or permit any spirituous or malt liquors, wine, or cider, to be drank on or within the premises or house occupied or kept by such keeper or keepers, his, her, or their agents or servants, on the said first day of the week.

Penalty.

SECTION 8. Any person or persons violating the provisions of the foregoing section, shall, for each and every offense, forfeit and pay the sum of fifty dollars, one half of which shall be paid to the prosecutor, and the other half to the guardians of the poor of the city or county in which suit is brought, or in counties having no guardians of the poor, then to the overseers of the poor of the township, ward, or borough in which the offense was committed ; to be recovered before any mayor, alderman, burgess, or justice of the peace, as debts of like amount are now by law recoverable, in any action of debt brought in the name of the commonwealth, as well for the use of the guardians of the poor (or for the overseers of the poor of the township, ward, or borough, as the case may be) as for the person suing ; *Provided*, that when any prosecutor is himself a witness, on any trial under the provisions of this section, then the whole penalty of forfeiture shall be paid to the guardians or overseers as aforesaid ; *And provided further*, that it shall be a misdemeanor in office for such mayor, alderman, burgess, or justice of the peace to neglect to render to the said guardians of the poor and prosecutor the amount of such penalty, within ten days from the payment of the same.

Sunday
hunting and
fishing pro-
hibited.

SECTION 17. There shall be no hunting or shooting or fishing on the first day of the week, called Sunday ; and any person offending against the provisions of this section shall be liable to a penalty of twenty-five dollars.

RHODE ISLAND.

[Public Statutes of Rhode Island, 1882, page 686, chapter 244.]

Secular oc-
cupations
prohibited
on Sunday.

SECTION 15. Every person who shall do or exercise any labor or business or work of his ordinary calling, or use any game, sport, play, or recreation on the first day of the week, or suffer the same to be done or used by his children, servants, or apprentices, works of necessity and charity only excepted, shall be fined not exceeding five dollars for the first offense, and ten dollars for a second and every subsequent offense.

SECTION 16. Every person who shall employ, improve, set to work, or encourage the servant of any other person to commit any act named in the preceding section, shall suffer like punishment.

SECTION 17. All complaints for violations of the provisions of the preceding two sections shall be made within ten days after the committing thereof, and not afterwards.

Complaints.

SECTION 18. Every professor of the Sabbatarian faith or of the Jewish religion, and such others as shall be owned or acknowledged by any church or society of said respective professions as members of or as belonging to such church or society, shall be permitted to labor in their respective professions or vocations on the first day of the week, but the exception in this section contained shall not confer the liberty of opening shops or stores on the said day for the purpose of trade and merchandise, or lading, unlading, or of fitting out of vessels, or of working at the smith's business, or any other mechanical trade in any compact place, except the compact villages in Westerly and Hopkinton, or of drawing seines or fishing or fowling in any manner in public places, and out of their own possessions; and in case any dispute shall arise respecting the person entitled to the benefit of this section, a certificate from a regular pastor or priest of any of the aforesaid churches or societies, or from any three of the standing members of such church or society, declaring the person claiming the exemption aforesaid to be a member of or owned by or belonging to such church or society, shall be received as conclusive evidence of the fact.

Sabbatarians exempted.

Exception of Sabbatarian villages.

[Session Acts of Rhode Island, 1885, page 242, chapter 492.]

SECTION 2. Every person licensed to sell intoxicating liquors shall cause to be removed on his licensed premises all obstructions of whatever kind that may prevent a clear view of the interior of the same from the outside thereof, by the passer by, through the window, during the entire day of each Sunday; and every person violating the provisions of this section shall be fined twenty dollars.

Saloon windows to be unobstructed on Sundays.

SOUTH CAROLINA.

[Code of South Carolina, volume ii, chapter 61, page 573.]

SUNDAY AND HOLIDAYS:

SECTION 3782. NO PERSON TO WORK ON SUNDAY UNDER PENALTY OF ONE DOLLAR. On the Lord's day, commonly called Sunday, no trademan, artificer, planter, laborer, or other person, shall, upon land or water, do or exercise any labor, business, or work of his ordinary calling, works of necessity and charity alone excepted, nor employ himself in hunting, fishing, fowling, nor use any game, sport, or play, upon pain that every person so offending, being of the age of fourteen years or upwards, shall forfeit and pay one dollar.

Secular occupations prohibited on Sunday.

SECTION 3783. HUNTING ON SUNDAY PROHIBITED; PENALTY ON FAILURE TO PAY FINE. If any person shall be known to hunt on Sunday with a dog, or shall be found off his premises on Sunday, having with him a shot gun, rifle, or pistol, he shall be guilty of a misdemeanor, and pay a fine not exceeding fifty dollars, two thirds of such fine to inure

Carrying firearms on Sunday prohibited.

Fines.

to the benefit of the public schools in the county of which such convict is a resident, the remainder to the informant; and upon failure of such convict to pay the required fine, he shall be imprisoned at hard labor for not more than three months, as the court shall direct; *Provided*, that this section shall not apply to any person who may violate its provisions in defense of his own property.

OF THE OBSERVANCE OF THE LORD'S DAY AND BETTER PROTECTION
OF RELIGIOUS WORSHIP, AND LEGAL HOLIDAYS.

Secular
labor pro-
hibited.

SECTION 1631. No tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly labor, business, or work of their ordinary callings upon the Lord's day (commonly called Sunday), or any part thereof (works of necessity or charity alone excepted); and every person being of the age of fifteen years or upwards, offending in the premises, shall, for every such offense, forfeit the sum of one dollar.

Sunday
trafficking
prohibited.

SECTION 1632. No person or persons whatsoever shall publicly cry, show forth, or expose to sale, any wares, merchandise, fruit, herbs, goods, or chattels whatsoever, upon the Lord's day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried, or showed forth, or exposed to sale.

Public sports
prohibited.

SECTION 1633. No public sports or pastimes, as bear-baiting, bull-baiting, foot-ball playing, horse-racing, interludes, or other games, exercises, sports, or pastimes whatsoever, shall be used on the Lord's day by any person or persons whatsoever; every person or persons offending in any of the premises shall forfeit for every offense the sum of one dollar.

Enforce-
ment of law.

SECTION 1634. For the better execution of all foregoing provisions, every trial justice within his county shall have power and authority to summon before him any person or persons whatsoever who shall offend in any of the particulars before mentioned, and upon his own view or confession of the party, or proof of any one or more witnesses, upon oath, said trial justice shall give a warrant, under his seal, to seize the said goods cried, showed forth, or put to sale as aforesaid, and to sell the same; and as to the other penalties and forfeitures, to impose a fine and penalty for the same, and to levy the said forfeitures and penalties by way of distress and sale of the goods of every such offender, returning overplus, if any be, for charges allowed for the distress and sale. All forfeitures and penalties recovered under this chapter to be paid over to the county treasurer for the use of the county.

Sunday
gaming-
houses pro-
hibited.

SECTION 2592. Whoever shall keep, or suffer to be kept, any gaming table, or permit any game or games to be played in his, or her, or their houses, on the Sabbath day, such person or persons, on conviction thereof before any court having jurisdiction, shall be fined in the sum of fifty dollars, to be sued for on behalf of, and to be recovered for, the use of the State.

[General Statutes of South Carolina, 1882, pages 442, 483, 728.]

SECTION 1475. RUNNING TRAINS ON SUNDAY. It shall be unlawful for any railroad corporation, owning or controlling railroads operating in this State, to load or unload, or permit to be loaded or unloaded, or to run or permit to be run, on Sunday, any locomotive, cars, or trains of cars, moved by steam power, except as hereinafter provided, and except to unload cars loaded with animals.

Railroad
work pro-
hibited on
Sunday.

SECTION 1476. It shall be lawful for said corporations or persons to run on said day their regular mail trains, and such construction trains, or other trains rendered necessary by extraordinary emergencies, other than those incident to freight or passenger traffic, "and such freight trains as may be *in transitu* which can reach their destination by six o'clock A. M."

SECTION 1477. It shall be lawful for any train running by a schedule in conformity with the provisions of this chapter, but delayed by accident or other unavoidable circumstances, to be run until it reaches the point at which it is usual for it to rest upon a Sunday.

SECTION 1478. For a wilful violation of the provisions of sections 1475, 1476, and 1477 of this chapter, the railroad company so offending shall forfeit to the State five hundred dollars, to be collected in any court of competent jurisdiction.

Penalty.

SOUTH DAKOTA.

[See North Dakota.]

TENNESSEE.

[Code of Tennessee, 1884, chapter 11.]

SECTION 2289. If any merchant, artificer, tradesman, farmer, or other person shall be guilty of doing or exercising any of the common avocations of life, or of causing or permitting the same to be done by his children or servants, acts of real necessity or charity excepted, on Sunday, he shall, on due conviction thereof before any justice of the peace of the county, forfeit and pay three dollars, one half to the person who will sue for the same, the other half for the use of the county.

Secular
employments
prohibited
on Sunday.

SECTION 2290. Any person who shall hunt, fish, or play at any game of sport, or be drunk on Sunday, as aforesaid, shall be subject to the same proceedings and liable to the same penalties as those who work on the Sabbath.

Sunday
amusements
prohibited.

SECTION 2013. Every person selling or offering to sell any article or traffic whatsoever, within view of any worshiping assembly on the Sabbath day, in such manner as to disturb such assembly, is also liable as prescribed in section 2011. The provisions of this last section do not extend to any person selling such articles of traffic as he may lawfully sell on the Sabbath day, and at his usual place of business.

[Act of February 22, 1889. Session Acts, chapter 22, page 60.]

Sunday
liquor-selling
prohibited.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee:* The law of this State prohibiting the sale of liquor on Sunday, as compiled in section 5671 of Milliken and Vertree's compilation, be so amended as to prohibit the sale on Sunday of any malt, vinous, fermented, or other intoxicating liquors, or to keep open on Sunday any place where such liquors are sold or dispensed. And any person offending shall be punished as provided in said act; *Provided*, that the provisions of this act shall not apply to druggists selling on the prescription of a practicing physician; *Provided further*, that restaurants and eating houses where spirituous, vinous, and malt liquors are sold under the license of the law of the State on week days, shall be allowed to conduct their eating department on Sunday, but the bar room shall be closed, and no drinks of any kind sold.

TEXAS.

[Laws of Texas, 1887, chapter 116, page 108. Amendment of article 186 of the Penal Code, approved April 10, 1883.]

SUNDAY LAW.

Secular
labor pro-
hibited on
Sunday.

ARTICLE 183. Any person who shall hereafter labor, or compel, force, or oblige his employees, workmen, or apprentices to labor on Sunday, or any person who shall hereafter hunt game of any kind whatsoever on Sunday within one half mile of any church, school-house, or private residence, shall be fined not less than ten nor more than fifty dollars.

[Approved April 2, 1887.]

Sunday
trafficking
prohibited.

ARTICLE 186. Any merchant, grocer, or dealer in wares or merchandise, or trader in any business whatsoever, or the proprietor of any place of public amusement, or the agent or employee of any such person, who shall sell or barter, or permit his place of business or place of public amusement to be opened for the purpose of traffic or public amusement on Sunday, shall be fined not less than twenty nor more than fifty dollars. The term "place of public amusement," shall be construed to mean circuses, theaters, variety theaters, and such other amusements as are exhibited, and for which an admission fee is charged; and shall also include dancing at disorderly houses, low dives, and places of like character, with or without fees for admission.

Amuse-
ments pro-
hibited.

Exceptions.

ARTICLE 186a. The preceding article shall not apply to markets or dealers in provisions as to sales of provisions made by them before nine o'clock A. M., nor to the sale of burial or shrouding material, newspapers, ice, ice-cream, milk, nor to the sending of telegraph or telephone messages at any hour of the day, nor to keepers of drug stores, hotels, boarding-houses, restaurants, livery-stables, barber shops, bath houses, ice dealers, nor to telegraph nor telephone offices.

[Special Laws of Texas, 1889, pages 155, 157.]

SECTION 21. GENERAL POWERS. That the city council shall have exclusive control and power . . . to close drinking houses, saloons, bar rooms, beer saloons, and all places or establishments where intoxicating or fermented liquors are sold on Sundays, and prescribe hours for closing them, and also all places of amusement and business.

Powers
delegated
to councils.

UTAH.

[Compiled Laws of Utah, 1888, volume ii, page 594, chapter 7.]

SECTION 4514. Every person who, on Sunday, gets up, exhibits, opens, or maintains, or aids in getting up, exhibiting, opening, or maintaining, any bull, bear, cock, or prize fight, horse-race, circus, gambling house, or saloon, or any barbarous and noisy amusement, or who keeps, conducts, or exhibits any theater, melodeon, dance, cellar, or other place of musical, theatrical, or operatic performance, spectacle, or representation where any wines, liquors, or intoxicating drinks are bought, sold, used, drank, or given away, or who purchases any ticket of admission, or directly or indirectly pays any admission fee to or for the purpose of witnessing or attending any such place, amusement, spectacle, performance, or representation, is guilty of a misdemeanor.

Acts pro-
hibited on
Sunday.

SECTION 4515. Every person who keeps open on Sunday any store, workshop, bar, saloon, banking house, or other place of business, for the purpose of transacting business therein, is punishable by fine not less than five nor more than one hundred dollars.

Sunday
occupations
prohibited.

SECTION 4516. The provisions of the preceding section do not apply to persons who, on Sunday, keep open hotels, boarding-houses, baths, restaurants, taverns, livery-stables, or retail drug stores for the legitimate business of each, or such manufacturing establishments as are usually kept in continued operation.

Exceptions.

SECTION 4519. Every person who performs any unnecessary labor, or does any unnecessary business on Sunday, is guilty of a misdemeanor, and shall be fined in any sum not exceeding twenty-five dollars.

Sunday
labor pro-
hibited.

SECTION 4520. Labor employed by employees of such works as are usually kept in constant operation, and in irrigating, is not included in the foregoing section.

SECTION 4521. For the purposes of this act, Sunday shall commence at midnight Saturday, and terminate the following midnight.

VERMONT.

[Revised Laws of Vermont, 1881, chapter 202, page 826.]

SABBATH-BREAKING.

SECTION 4315. Any person who between twelve o'clock Saturday night and sunset on the following Sunday exercises any business or employment, except such only as works of necessity and charity, or is

Secular
employments
prohibited
on Sunday.

Traveling
and visiting
prohibited
on Sunday.

present at any public assembly except such as is held for social and religious worship and moral instruction, or travels, except from necessity or charity, or visits from house to house, except from motives of humanity or charity, or for moral or religious edification, or holds or resorts to any ball or dance, or uses or exercises any game, sport, or play, or resorts to any tavern, inn, or house of entertainment for amusement or recreation, shall be fined not more than two dollars.

Sunday
shooting
prohibited.

SECTION 4316. A person who hunts, shoots, or pursues, takes, or kills wild game or other birds or animals, or discharges any firearms, except in the just defense of person or property, or in the performance of military or police duty, on Sunday, shall be fined ten dollars, one half to go to the person who makes the complaint, and one half to the State.

[Act of November 27, 1888. An act in addition to chapter 202 of the Revised Laws, in relation to Sunday trains.]

Sunday
to be duly
regarded.

SECTION 1. The Board of Railroad Commissioners may authorize the running upon any railroad of such trains on Sunday as, in the opinion of the board, the public necessity and convenience may require, having regard to the due observance of the day.

VIRGINIA.

[Code of Virginia, 1887, page 900.]

Secular
labor pro-
hibited.

SECTION 3799. VIOLATION OF THE SABBATH ; HOW PUNISHED. If a person, on the Sabbath day, be found laboring at any trade or calling, or employ his apprentices or servants in labor or other business, except in household or other work of necessity or charity, he shall forfeit two dollars for each offense. Every day any servant or apprentice is so employed shall constitute a distinct offense.

Sabbatari-
ans exempted.

SECTION 3800. EXCEPTION AS TO THE JEWS.¹ The forfeiture declared by the preceding section, shall not be incurred by any person who conscientiously believes that the seventh day of the week ought to be observed as a Sabbath, and actually refrains from all secular business and labor on that day, provided he does not compel an apprentice or servant not of his belief, to do secular work or business on a Sunday, and does not on that day disturb any other person.

Prohibition
of transporta-
tion.

SECTION 3801. WHAT TRANSPORTATION, ETC., BY RAILROADS ON SUNDAY PROHIBITED. No railroad company, receiver, or trustee controlling or operating a railroad, shall, by any agent or employee, load, unload, run, or transport upon such road on a Sunday, any car, train of cars, or locomotive, nor permit the same to be done by any such agent or employee, except where such cars, trains, or locomotives are used exclusively for the relief of wrecked trains, or trains so disabled as to obstruct the main track of the railroad ; or for the transportation of the nec-

Exceptions.

¹This law presents quite a contrast with the views of Virginia's early statesmen, Jefferson and Madison, on religious legislation and exemptions. See pages 23, 37, 73.

essary mail ; or for the transportation of passengers and their baggage ; or for the transportation of live stock ; or for the transportation of articles of such perishable nature as would be necessarily impaired in value by one day's delay in their passage ; *Provided, however*, that if it should be necessary to transport live stock or perishable articles on a Sunday to an extent not sufficient to make a whole train load, such train load may be made up with cars loaded with ordinary freight.

Exceptions.

SECTION 3802. WHAT TIME THE WORD "SUNDAY" IN THE PRECEDING SECTION EMBRACES. The word "Sunday" in the preceding section shall be construed to embrace only that portion of the day between sunrise and sunset ; and trains *in transitu* having started prior to twelve o'clock on Saturday night, may, in order to reach the terminus or shops of the railroad, run until nine o'clock the following Sunday morning, but not later.

SECTION 3803. VIOLATIONS OF SECTION 3801 ; WHERE AND HOW PUNISHED. Any railroad company, receiver, or trustee violating the provisions of section 3801, shall be deemed to have committed a separate offense in each county or corporation in which such car, train of cars, or locomotive shall run, or in which such car or train of cars shall be loaded or unloaded ; and shall be fined not less than fifty nor more than one hundred dollars for each offense.

Penalty.

SECTION 3804. THE SALE OF INTOXICATING LIQUORS ON SUNDAY, ETC. ; HOW PUNISHED. No bar-room, saloon, or other place for the sale of intoxicating liquors, shall be opened, and no intoxicating bitters or other drink shall be sold in any bar-room, restaurant, saloon, store, or other place, between twelve o'clock on any Saturday night and sunrise on the succeeding Monday morning. If any person violate the provisions of this section, he shall be fined not less than ten nor more than five hundred dollars ; and shall also, in the discretion of the court, forfeit his license ; but nothing herein contained shall apply to any city having police regulations on this subject, and an ordinance prescribing a penalty equal to that imposed by this section.

Sunday
saloons
prohibited.

Penalty.

SECTION 3806. CARRYING DANGEROUS WEAPONS TO PLACE OF RELIGIOUS WORSHIP, OR ON SUNDAY AT PLACE OTHER THAN HIS OWN PREMISES ; HOW PUNISHED. If any person carry any gun, pistol, bowie-knife, dagger, or other dangerous weapon, to a place of worship while a meeting for religious purposes is being held at such place, or without good and sufficient cause therefor, carry any such weapon on a Sunday at any place other than his own premises, he shall be fined not less than twenty dollars. If any offense under this section be committed at a place of religious worship, the offender may be arrested on the order of a conservator of the peace, without warrant, and held until a warrant can be obtained, but not exceeding three hours. It shall be the duty of every justice, upon his own knowledge, or upon the affidavit of any person, that an offense under this section has been committed, to issue a warrant for the arrest of the offender.

Carrying
firearms on
Sunday.

WASHINGTON.

[Code of Washington, 1881, page 227.]

OBSERVANCE OF SUNDAY.

Sunday
amusements
prohibited.

SECTION 1266. No person shall keep open any play-house or theater, race-ground, cock pit, or play at any game of chance for gain, or engage in any noisy amusements, or keep open any drinking or billiard saloon, or sell or dispose of any intoxicating liquors, as a beverage, on the first day of the week, commonly called Sunday.

Service of
legal papers
on Sunday.

SECTION 1267. No judicial business shall be transacted by any court, except the deliberations of a jury, who have received a case on a week day so called, and who receive further instructions from the court at their request, or deliver their verdict, nor any civil process be served by certifying or attesting officer, or any record made by a legally appointed or elected officer, upon the first day of the week, commonly called Sunday; *Provided*, that criminal process may issue for the apprehension of any person charged with crime, and criminal examination to be proceeded with. Writs of arrest, attachment, and injunctions may issue and be served on Sunday, in all cases in which the said writs might have been issued and served under the provisions of the civil code, the justices' practice act and the probate practice act.

Penalty.

SECTION 1268. Any person violating any of the provisions of the two preceding sections of this act, shall be punished, upon conviction thereof, by a fine of not less than thirty dollars nor more than two hundred and fifty dollars for each offense.

SECTION 1269. The person or persons found guilty of any offense specified in this title shall be fined as aforesaid, to be paid to the treasurer of the county for the benefit of common schools, and the offender shall stand committed until the fine and costs are paid, or the same be commuted by confinement, at the rate of two dollars per day.

[Page 351, chapter 168.]

Sunday
trading
prohibited.

SECTION 2067. It shall be unlawful for any person or persons of this territory to open on Sunday for the purposes of trade, or sale of goods, wares, and merchandise, any shop, store, or building, or place of business whatever; *Provided*, that this chapter shall apply to hotels only in so far as the sale of intoxicating liquors is concerned, and shall not apply to drug stores, livery-stables, and undertakers.

Penalty.

SECTION 2068. Any person or persons violating the foregoing section shall be guilty of a misdemeanor, and on conviction thereof be fined in any sum not less than twenty-five nor more than one hundred dollars.

SECTION 2069. And it shall be the duty of any and all public officers of this territory, knowing of any violation of this chapter, to make complaint, under oath, to the nearest justice of the peace from where the offense was committed.

WEST VIRGINIA.

[Code of West Virginia, second edition, 1887, chapter 149, page 902.]

SABBATH-BREAKING.

SECTION 16. If a person, on a Sabbath day, be found laboring at any trade or calling, or employ his minor children, apprentices, or servants in labor or other business, except in household or other work of necessity or charity, he shall be fined not less than five dollars for each offense. And every day any such minor child, or servant, or apprentice is so employed, shall constitute a distinct offense. And any person found hunting, shooting, or carrying firearms on the Sabbath day, shall be guilty of a misdemeanor, and fined not less than five dollars.

Secular
employments
prohibited
on Sunday.

SECTION 17. No forfeiture shall be incurred under the preceding section for the transportation on Sunday of the mail, or of passengers and their baggage, or for running any railroad train or steamboat on the Sabbath day, or for carrying firearms, or shooting on that day, by any person having the right to do so under the laws of the United States or of this State; and no forfeiture for laboring on the Sabbath day shall be incurred under the said section, by any person who conscientiously believes that the seventh day of the week ought to be observed as a Sabbath, and actually refrains from all secular business and labor on that day, provided he does not compel an apprentice or servant not of his belief to do secular work or business on Sunday, and does not on that day disturb any other person in his observance of the same. And no contract shall be deemed void because it is made on the Sabbath day.

Exceptions.

Sabbatari-
ans exempted.

Sunday con-
tracts valid.

WISCONSIN.

[Annotated Statutes of Wisconsin, 1889, chapter 2310.]

SECTION 4595. VIOLATION OF THE SABBATH. Any person who shall keep open his shop, warehouse, or work-house, or shall do any manner of labor, business, or work, except only works of necessity and charity, or be present at any dancing or public diversion, show, or entertainment, or take part in any sport, game, or play, on the first day of the week, shall be punished by a fine not exceeding ten dollars; and such day shall be understood to include the time between the midnight preceding and the midnight following the said day, and no civil process shall be served or executed on said day.

Acts pro-
hibited on
Sunday.

SECTION 4596. OBSERVERS OF OTHER DAYS NOT AFFECTED. Any person who conscientiously believes that the seventh, or any other day of the week, ought to be observed as the Sabbath, and who actually refrains from secular business and labor on that day, may perform secular labor and business on the first day of the week, unless he shall wilfully disturb thereby some other person, or some religious assembly on said day.

Exemption
clause.

Relative to
processes
against
Sabbatarians.

SECTION 4279. NOT ON SATURDAY, WHEN. Whenever an execution or other final process shall be issued against the property of any person who habitually observes the seventh day of the week, instead of the first, as a day of rest, the officer to whom such process shall be directed, shall not levy upon or sell the property of any such person on the seventh day of the week ; *Provided*, that said person shall deliver to such officer an affidavit in writing, setting forth the fact that he habitually keeps and observes the seventh day of the week, as a day of rest, at any time before such levy, or at least two days before such sale, as the case may be ; and such sale may at the time appointed therefor be adjourned to any day within the life of the execution, or such execution may be renewed, as in other cases.

WYOMING.

[Laws of Wyoming, 1888, chapter 86, page 182.]

AN ACT RELATING TO THE PROPER OBSERVANCE OF THE FIRST DAY OF THE WEEK, COMMONLY CALLED SUNDAY.

Sunday
liquor-selling
prohibited.

SECTION 1. Every person or persons, company or corporation, having license to sell liquors under the laws of Wyoming, who shall keep open, or suffer his or their agent or employee to keep open, his or their place of business, or who shall sell, give away, or dispose of, or permit another to sell, give away, or dispose of, on his or their premises, any spirituous, malt, vinous, or fermented liquors, or any mixtures of any such liquors, on the first day of the week, commonly called Sunday, or upon any day upon which any general or special election is being held, shall be guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than twenty-five (25) dollars, or more than one hundred (100) dollars, or imprisonment in the county jail not to exceed three months.

Secular
occupations
prohibited.

SECTION 2. It shall be unlawful for any person or persons, company or corporation, to keep open any barber shop, store, shop, or other place of business for the transaction of business therein, upon the first day of the week, commonly called Sunday ; *Provided*, this section shall not apply to newspaper printing-offices, railroads, telegraph companies, hotels, restaurants, drug stores, livery-stables, news depots, farmers, cattle men and ranchmen, mechanics, furnaces or smelters, glass works, electric light plants, and gas works, the venders of ice, milk, fresh meat, and bread, except as to the sale of liquors and cigars. Any person, company, or corporation who shall violate the provisions of this section, shall, on conviction, be fined in a sum of money not less than twenty-five dollars nor more than one hundred dollars, for each offense.

Exceptions.

SECTION 4. For the purposes of this act, the first day of the week, commonly called Sunday, shall begin at midnight Saturday, and terminate the following midnight.

OPERATION OF SUNDAY LAWS.

INTRODUCTION OF SABBATARIANISM INTO ARKANSAS, AND THE SUNDAY LAW.

Illustrative of the operation of Sunday laws, the following excerpt from an article in the St. Louis "Globe-Democrat," on the trials of the Seventh-day Adventists in Arkansas, is inserted. After alluding to the success of the denomination in the State, it says :

Operation of Sunday laws.

"They have been from the first apparently an industrious and God-fearing people, the chief difference between them and other Christian bodies being that they observe the seventh day as the Sabbath, according to the commandment. But it seems that sectionalism cannot lay down its arms even when the sacred precincts of religion are entered, so *among the first things performed by the Legislature at its session last winter, less than a year after these people had come into the State, was the repeal of the clause which gave them the liberty to keep the day of their choice.* This may be a part of the 'reform' connected with the new machine ; but if so, it seems to be directed by a very bigoted spirit.

Character of Adventists.

Repeal of exemption clause.

"As the law now stands, all parties, irrespective of their religious belief, *are compelled to observe the first day of the week* as the Christian Sabbath, and under this law three indictments were found against members of the above denomination, one of the cases being against Elder Scoles, one of their ministers, whose case is to be made the test in the Supreme Court as to the constitutionality of the recent act of the Legislature. It is a little singular that *no one else has been troubled on account of the law, with perhaps one minor exception, while members of the above denomination are being arrested over the whole State. It savors just a trifle of the religious persecution which characterized the dark ages.* A minister of the gospel pleading in a court of justice, with the open Bible in his hand, for the liberty to keep God's commands is a strange sight in this country;¹ but according to the

All compelled to keep Sunday.

Adventists alone arrested.

A minister prosecuted.

¹ The indictment of Rev. J. W. Scoles, an ordained minister, was as follows :

"STATE OF ARKANSAS }
v. } Indictment.
J. W. SCOLES.

Indictment of Mr. Scoles.

"The grand jury of Washington county, in the name and by the authority of the State of Arkansas, accuse J. W. Scoles of the crime of Sabbath-breaking, committed as follows ; viz., the said J. W. Scoles, on Sunday, the twenty-sixth day of April, 1885, in the county and State aforesaid, did unlawfully perform labor other than customary household duties of daily comfort, necessity, or charity, against the peace and dignity of the State of Arkansas.

"J. P. HENDERSON, Prosecuting Attorney."

Mr. Scoles was arrested at Springdale, Arkansas, where he had organized a church of Sabbatarians in 1885, and where they had begun a house of worship. In reference to his arrest, Rev. Mr. Scoles says :

Deprivation
of rights.

rulings of the court in this case, a man has no rights of conscience outside of the dictation of the law. If this be the case, and if our law-makers are to control the religious opinions of their constituents, *there is no telling what we may yet see in the way of enforcing their peculiar creeds and dogmas.* Much interest is manifested here over this matter, and a decision from the higher courts is anxiously looked for.”¹

SPEECH OF PATRICK HENRY.

Baptists
persecuted
in Virginia.

Similar prosecutions to the foregoing occurred in Virginia in its early history. From 1768 to 1775 Baptists were frequently arrested on the charge of “disturbing the peace.” Jefferson, Madison, and Henry were all radically opposed to any interference in matters of religion, and were zealous supporters of the rights of conscience. So in this case Mr. Henry came fifty miles to defend some Baptist ministers who had been arrested. The only difference in the two cases is that those ministers were arrested for preaching the gospel as they believed the Bible commanded them, and Rev. Scoles was arrested for keeping the commandments of God, as he believed the Bible commanded him.

Henry’s
entrance
into court.

In relating the case, the historian says :

“He [Mr. Henry] entered the court-house while the prosecuting attorney was reading the indictment. He was a stranger to most of the spectators ; and being dressed in the country manner, his entrance excited no remark. When the prosecutor had finished his brief opening, the new-comer took the indictment, and glancing at it with an expression of puzzled incredulity, began to speak in the tone of a man who has just heard something too astounding for belief :

His speech.

“ ‘May it please your Worships, I think I heard read by the prosecutor, as I entered the house, the paper I now hold in my hand. If I have rightly understood, the king’s attorney has framed an indictment for the purpose of arraigning and punishing by imprisonment these three inoffensive persons before the bar of this court for a crime of great magnitude,—as disturbers of the peace.’² May it please the court,

Circum-
stances under
which Rev.
Mr. Scoles
was arrested.

“I volunteered to do the painting as my share of the work, in addition to my subscription. I worked away at the church at odd times, sometimes half a day and sometimes more, as I could spare the time. The last Sunday in April, 1885, in order to finish the work so I could be free to go out for the summer’s labor with the tent, and expecting to go the next day twenty miles, I went over to the church, and finished up a small strip of painting on the south side of the house, clear out of sight of all public roads ; and here I quietly worked away for perhaps two hours, in which time I finished it, and then went home. It was for this offense that I was indicted.”

¹ The Supreme Court of the State confirmed the decision of the lower court, and in this case, as in the case of *Shover v. the State*, *ante* page 146 *et seq.*, the Sunday law was held to be constitutional. The decision, however, was not written out.

Similarity
of present
and past
persecutions.

² There are some striking similarities in the indictments of the Baptists in the last century and those of the Sabbatarians in this. Baptists were arrested for “disturbing the peace ;” Sabbatarians are now arrested because they “perform labor . . . against the peace and dignity of the State.” Judging from present appearances, “dis-

what did I hear read? Did I hear it distinctly, or was it a mistake of my own? Did I hear an expression as of crime, that these men, whom your Worshipps are about to try for misdemeanor, are charged with— with — with what?’

Henry's
exclamations.

turbing the peace” will prove as convenient (though on account of the penalties being so much less severe, will not prove as effectual) a charge on which to arrest persons whose opinions are troublesome, as the charge of “treason” formerly did in England.

In the proposed Blair Sunday bill, and in many of the State Sunday laws, provision is made for the exemption of “conscientious” Sabbatarians from the penalties of the law for labor upon Sunday, “provided such labor be not done to the disturbance of others.” The worthlessness of any such provision as this, however, is manifest; for some people are “disturbed” even when they hear of a Sabbatarian working upon the day which they regard as holy, though such person be plowing or hoeing,— and that, too, miles away from any place of meeting. The unreasonableness and injustice of any such provision, even in purely civil matters, was illustrated in San Francisco a few years ago; and in a religious question like that of Sabbath observance the evil would be increased a hundredfold.

An unreason-
able provision.

In 1887 the city of San Francisco had an ordinance reading as follows:

“No person shall in any place indulge in conduct having a tendency to annoy persons passing or being upon the public highway, or upon adjacent premises.”

A similar
ordinance.

Under that ordinance one Ferdinand Pape was arrested for “annoying” some one by distributing circulars on the street. He applied to the Superior Court for a writ of *habeas corpus*, claiming that the offense charged against him did not constitute a crime, and that the ordinance making such action an offense was invalid and void, because it was unreasonable and uncertain. The case is reported as follows:

An arrest
made.

“The writ was made returnable before Judge Sullivan, and argued by Henry Hutton in behalf of the imprisoned offender. Disposing of the question, the Judge gave quite a lengthy written opinion, in which he passed a somewhat severe criticism upon the absurdity of the contested ordinance, and discharged Pape from custody. Said the Judge:

Decision
of Superior
Court.

“If the order be law, enforceable by fine and imprisonment, it is a crime to indulge in any conduct, however innocent and harmless in itself, and however unconsciously done, which has a tendency to annoy other persons. The rival tradesman who passes one's store with an observant eye as to the volume of business, is guilty of a crime, because the very thought of rivalry and reduction of business has a tendency to annoy. The passing of the most lenient creditor has a tendency to annoy, because it is a reminder of obligations unfulfilled. The passing of a well-clad, industrious citizen, bearing about him the evidences of thrift, has a tendency to annoy the vagabond, whose laziness reduces him to a condition of poverty and discontent. The importunities of the newsboy who endeavors with such persistent energy to dispose of his stock, has a tendency to annoy the prominent citizen who has already read the papers, or who expects to find them at his door as he reaches home. He who has been foiled in an attempted wrong upon the person or property of another, finds a tendency to annoy in the very passing presence of the person whose honesty or ingenuity has circumvented him. And so instances might be multiplied indefinitely in which the most harmless and inoffensive conduct has a tendency to annoy others. If the language of the ordinance defines a criminal offense, it sets a very severe penalty of liberty and property upon conduct lacking in the essential element of criminality.

Unjust
consequences
of such laws.

Ease with
which some
people are
disturbed.

“But it may be said that courts and juries will not use the instrumentality of this language to set the seal of condemnation on unoffending citizens, and to unjustly deprive them of their liberty and brand them as criminals. The law countenances no such dangerous doctrine, countenances no principle so subversive of liberty, as that the life or liberty of a subject should be made to depend upon the whim or caprice of judge or jury, by exercising a discretion in determining that certain conduct does or does not come within the inhibition of a criminal action. The law should be engraved so plainly and distinctly on the legislative tables that it can be discerned alike by all

A dangerous
doctrine.

Mr. Henry's
delivery.

"Having delivered these words in a halting, broken manner, as if his mind was staggering under the weight of a monstrous idea, he lowered his tone to the deepest bass; and assuming the profoundest solemnity of manner, answered his own question:

"*Preaching the gospel of the Son of God!*"

"Then he paused. Every eye was riveted upon him, and every mind intent; for all this was executed as a Kean or a Siddons would have performed it on the stage,—eye, voice, attitude, gesture, all in accord to produce the utmost possibility of effect. Amid a silence that could be felt, he waved the indictment three times round his head, as though still amazed, still unable to comprehend the charge. Then he raised his hands and eyes to heaven, and in a tone of pathetic energy wholly indescribable, exclaimed,

"Great God!"

"At this point, such was his power of delivery, the audience relieved their feelings by a burst of sighs and tears. The orator continued:

"May it please your Worships, in a day like this, when Truth is about to burst her fetters; when mankind are about to be aroused to claim their natural and inalienable rights; when the yoke of oppression that has reached the wilderness of America, and the unnatural alliance of ecclesiastical and civil power is about to be dissevered,—at *such* a period, when Liberty, Liberty of Conscience, is about to wake from her slumberings, and inquire into the reason of such charges as I find exhibited here to-day in this indictment"—

"Here occurred another of his appalling pauses, during which he cast piercing looks at the judges and at the three clergymen arraigned. Then resuming, he thrilled every hearer by his favorite device of repetition.

"If I am not deceived,—according to the contents of the paper I now hold in my hand,—these men are accused of *preaching the gospel of the Son of God!*"

"He waved the document three times around his head, as though still lost in wonder; and then with the same electric attitude of appeal to heaven, he gasped,

"Great God!"

"This was followed by another burst of feeling from the spectators; and again this master of effect plunged into the tide of his discourse:

"May it please your Worships, there are periods in the history of man when corruption and depravity have so long debased the human

Religion
and the state
about to be
dissevered.

A tyrannical
provision.

subjects of the commonwealth, whether judge upon the bench, juror in the box, or prisoner at the bar. Any condition of the law which allows the test of criminality to depend on the whim or caprice of judge or juror, savors of tyranny. The language employed is broad enough to cover conduct which is clearly within the constitutional rights of the citizen. It designates no border-line which divides the criminal from the non-criminal conduct. Its terms are too vague and uncertain to lay down a rule of conduct. In my judgment, the portion of the ordinance here involved is uncertain and unreasonable."

character, that man sinks under the weight of the oppressor's hand,—becomes his servile, his abject slave. He licks the hand that smites him. He bows in passive obedience to the mandates of the despot; and in this state of servility, he receives his fetters of perpetual bondage. But may it please your Worships, such a day has passed. From that period when our fathers left the land of their nativity for these American wilds,—from the moment they placed their feet upon the American continent,—from that moment despotism was crushed, the fetters of darkness were broken, and Heaven decreed that man should be free,—free to worship God according to the Bible. In vain were all their offerings and bloodshed to subjugate this new world, if we, their offspring, must still be oppressed and persecuted. But, may it please your Worships, permit me to inquire once more, For what are these men about to be tried? This paper says, *for preaching the gospel of the Saviour to Adam's fallen race!*

Days of
abject obedi-
ence past.

Americans
destined
to be free.

“Again he paused. For the third time, he slowly waved the indictment round his head; and then turning to the judges, looking them full in the face, exclaimed with the most impressive effect,

“‘What laws have they violated?’

“The whole assembly were now painfully moved and excited. The presiding judge ended the scene by saying,

“‘Sheriff, discharge these men.’

“It was a triumph of the dramatic art. The men were discharged; but not the less in other counties, did zealous bigots pursue and persecute the ministers of other denominations than their own. It was not till the Revolutionary War absorbed all minds, that Baptists ceased to be imprisoned.”¹

Mr. Henry's
triumph.

¹Parton's "Life of Thomas Jefferson," page 204 *et seq.* It is, indeed, a fact to be deplored that, even in free America, the state cannot be contented with confining its punishment to the criminal classes, but must enact and enforce laws against some of the most respectable and worthy citizens of the land. After all the examples we have had of the prosecution of noble men like Roger Williams and other Baptists, of the Quakers, Unitarians, and infidels, how can Americans again allow the revival of persecution on account of belief? Is the land so cleared of criminals that its jails would be lying idle unless they can be filled with Christians? or are the jails intended as altars from which prayers shall daily ascend to God for the prosperity of the nation and the welfare of its inhabitants? It is a day that should make Americans blush for shame when the most enlightened nation on earth locks Christians in the dirty cells of its jails simply because they obey the words of the Bible as they understand them, and just as they are read from the pulpit of every Christian church in the land!

A lesson
hard to learn

As the historian says, "It was not till the Revolutionary War absorbed all minds, that Baptists ceased to be persecuted." And it is only when the spirit of the Revolution—the spirit of American freedom—is effaced from our minds, that we will again begin to persecute. As was declared by the report of the House of Representatives, sixty years ago, "It is, perhaps, fortunate for our country that the proposition [for Sunday legislation in 1829-30] should have been made at this early period while the spirit of the Revolution yet exists in full vigor." And it was; for the Sunday movement received a set-back from which it has not even yet recovered. But the Sunday advocates seem to think that the spirit of the Revolution has now been effaced sufficiently so that Sunday laws can be enacted and enforced with impunity.

Spirit of the
Revolution.

REPORT OF THE BAR ASSOCIATION OF THE STATE OF ARKANSAS.

SUNDAY LAWS.

Exemption
clause in
Arkansas.

“Our statute as it stands in ‘Mansfield’s Digest,’ provides that ‘persons who are members of any religious society who observe as Sabbath any other day of the week than the Christian Sabbath, or Sunday, shall not be subject to the penalties of this act (the Sunday law), so that they observe one day in seven, agreeably to the faith and practice of their church or society.’ ‘Mansfield’s Digest,’ section 1886.

Its repeal.

“This statute had been in force from the time of the organization of the State government; but it was unfortunately repealed by act of March 3, 1885. Acts, 1885, page 37.

A system
of religious
persecution.

“While the Jews adhere, of course, to the letter of the original command to remember the seventh day of the week, there is also in the State a small but respectable body of Christians who consistently believe that the seventh day is the proper day to be kept sacred; and in the case of *Scoles v. State*, our Supreme Court was compelled to affirm a judgment against a member of one of these churches, for worshipping God according to the dictates of his own conscience, supported, as he supposed, by good theological arguments. It is very evident that the system now in force, savoring as it does very much of religious persecution, is a relic of the middle ages, when it was thought that men could be made orthodox by an act of Parliament. Even in Massachusetts, where Sabbatarian laws have always been enforced with unusual vigor, exceptions are made in favor of persons who religiously observe any other day in the place of Sunday. We think that the law as it stood in ‘Mansfield’s Digest,’ should be restored, with such an amendment as would prevent the sale of spirits on Sunday, as that was probably the object of repealing the above section.”

Restoration
of exemption
clause recom-
mended.

OPEN LETTERS.

With the permission of the recipient, I insert the statements of some of the foremost lawyers and other prominent citizens of Arkansas, relative to the operation of the Sunday law of that State.

BAR OF THE WHOLE STATE SHOCKED.

The first is from Judge Williams of Little Rock, formerly a judge of the Supreme Court of the State of Arkansas :

“LITTLE ROCK, ARKANSAS, March 21, 1887.

“REV. DAN T. JONES :

“SIR : As requested, I give you a short *résumé* of the history of our Sabbath law of 1885. Up to the time of the meeting of the Legislature in January, 1885, our Sunday law had always excepted from it sanctions

the cases wherein persons from conscience kept the seventh day as the Sabbath. It had been the case for many years at the capital, that no Sabbath laws were observed by the saloon-keepers. After the election of 1884, the newly-elected prosecuting attorney of that district, commenced a rigid enforcement of the law. A few Jewish saloon-keepers successfully defied it during the session of the Legislature. This led to the total and unqualified repeal of the conscience proviso for the seventh day in the old law. This was used oppressively upon the seventh-day Sabbath Christians, to an extent that shocked the bar of the whole State. A test case was brought from Washington county. Our Supreme Court could not see its way clear to hold the law unconstitutional, but the judges, as men and lawyers, abhorred it. Judge B. B. Battle, one of the three judges, was, with Judge Rose and myself, a member of the standing Committee on Law Reform of our State Bar Association. In our report, as you see, we recommended a change, which the Association adopted unanimously, Chief Justice Cockrill and Associate Justices Smith and Battle being members present and voting. At the meeting of the General Assembly the next week (January, 1887), Senator Crockett introduced a bill repealing the obnoxious law, in so far as it affected those who keep holy the seventh day, still forbidding the opening of saloons on Sunday.¹

Sabbatarians
always had
been ex-
empted.

Sabbatarians
oppressed.

Members of
Committee on
Law Reform.

Senator
Crockett's bill.

Truly yours,

"SAM W. WILLIAMS."

LAW OPPRESSIVE ON SABBATARIANS.

The next is from Judge Rose of Little Rock, a prominent lawyer, and one of the Committee on Law Reform of the State Bar Association :

"LITTLE ROCK, ARKANSAS, April 15, 1887.

"REV. DAN T. JONES,

"SPRINGDALE, ARKANSAS :

"DEAR SIR : Yours received. The law passed in this State in 1885, and which has since been repealed, requiring all persons to keep Sunday as a day of rest, although they might religiously keep some other day of the week, was enacted, I think, to meet the case of certain Jews in this city who kept saloons and other business houses open on Sunday. It was said that those persons only made a pretense of keeping Saturday as a day of rest.² Whether these statements were true or not, I do not know. The act of 1885 was found to work oppressively on persons believing as you do that Saturday is the Christian as well as the Jewish Sabbath; and hence its repeal. It was manifestly unjust to them as well as to Jews who are sincere in their faith.

All com-
pelled to keep
Sunday.

Alleged
reason.

Sabbatarians
oppressed.

"You ask me to express my opinion as to the propriety of such legislation as that contained in the repealed act. Nothing can exceed my

¹ For Senator Crockett's speech on the adoption of this bill, see *ante* page 208 *et seq.*

² This was the plea made in the Legislature to get the exemption repealed; but it was a peculiarly significant fact that while Sabbatarians were prosecuted in various parts of the State, *not a single saloon-keeper was prosecuted during the whole two years.*

Abhorrence
for religious
legislation.

Consistency
manifested !

Religious
legislation the
result of
ignorance and
fanaticism.

abhorrence for any kind of legislation that has for its object the restraint of any class of men in the exercise of their own religious opinions. It is the fundamental basis of our government that every man shall be allowed to worship God according to the dictates of his own conscience. It was certainly not a little singular that while in our churches the command was regularly read at stated times, requiring all men to keep the Sabbath, which, amongst the Jews to whom the command was addressed, was the seventh day of the week, men should be prosecuted and convicted in the courts for doing so. As to the theological aspect of the matter, I am not competent to speak ; but as a civil requirement, my opinion is that any legislation that attempts to control the consciences of men as to the discharge of religious duty, can only be the result of that ignorance and fanaticism which for centuries proved to be the worst curse that ever afflicted humanity.

“Very respectfully yours,

“U. M. ROSE.”

NATURE OF THE SUNDAY PROSECUTION.

Mr. E. Stinson, a public school teacher in Hot Spring county, writes concerning the nature of the Sunday prosecutions as follows :

“MALCOLM, HOT SPRING COUNTY, ARKANSAS, }
March 27, 1887. }

“MR. JONES :

“DEAR SIR : In answer to your inquiry, will say that since the repeal of the exemption clause in our statutes, which allowed persons who kept another day than Sunday as Sabbath, to go about their ordinary work or business on that day, several indictments have been found in Hot Spring county. In each and every case the parties so indicted have been conscientious observers of the seventh day, so far as I know them. To my knowledge others have worked on Sunday who did not observe the seventh day, and no bills were found against them. I believe the prosecutions to be more for religious persecution than for the purpose of guarding the Sunday from desecration. The men who have been indicted are all good moral men and law-abiding citizens, to the best of my knowledge. The indictments, to the best of my belief, were malicious in their character, and without provocation. I believe the unmodified Sunday law to be unjust in its nature, and that it makes an unjust discrimination against a small but worthy class of our citizens. I am a member of the Baptist Church, and not an observer of the seventh day ; but I accept with gratitude the recent change in the laws of our State, which shows more respect for the conscientious convictions of all our citizens. I do not believe that if the same acts for which the indictments were lodged against Seventh-day Adventists, had been committed by those who did not keep the seventh day, any notice would have been taken of them.

Respectfully,

“E. STINSON.”

Sabbatarians
alone indicted.

Religious
persecution
intended.

Injustice of
Sunday law.

Other Sun-
day desc-
rators
unmolested.

PERSECUTION AND RELIGIOUS INTOLERANCE MANIFESTED.

The physician and the proprietor of the Potash Sulphur Springs Hotel, a health resort near Hot Springs, both old residents of the place, were personally acquainted with some of those convicted of Sabbath-breaking in Hot Spring county, and write as follows :

“POTASH SULPHUR SPRINGS, ARKANSAS, March, 1887.

“TO WHOM IT MAY CONCERN : We, the undersigned, herewith testify that the recent prosecutions against the observers of the seventh-day Sabbath in our vicinity, have brought to the surface a religious intolerance and a spirit of persecution, the existence whereof a great many imagine not to exist any more in our time.

Intolerance
manifested
toward
Sabbatarians.

“J. T. FAIRCHILD, M. D.

“E. E. WOODCOCK.”

SABBATARIANS ALONE INDICTED.

Another letter, from Mr. Fitzhugh, a justice of the peace, and acting deputy-sheriff in Hot Spring county during the two years in which the unmodified Sunday law was in force, will show the estimate as citizens and neighbors, placed upon some who were indicted for Sabbath-breaking.

“STATE OF ARKANSAS, COUNTY OF HOT SPRING, }
SALIM TOWNSHIP, April 9, 1887. }

“On the second day of March, 1885, the Legislature of Arkansas repealed the law allowing any person to observe as the Sabbath any day of the week that they preferred, and compelled them to keep the Christian Sabbath, or first day of the week. The effect of this change worked a hardship on a class of citizens in this county, known as Seventh-day Adventists, who observe the seventh instead of the first day of the week, as the Lord's Sabbath. There were five or six of them indicted (and some of them the second time) by the grand jury of this county, for the violation of this law.¹ In fact, these people were the only ones that were indicted for Sabbath-breaking, during the two years in which this law was in force. I was not intimately acquainted with but one of these people, Mr. John Shockey, who moved from Ohio, and settled within one and one-fourth miles of me, some two and a half years ago. I know nothing in the character of this gentleman but what would recommend him to the world at large. As a citizen, he recognizes and regards the laws of our country (with the above exception) ; as a neighbor, he might well be called a Samaritan ; as a Christian, he is strict to his profession, and proves his faith by his works.

Hardship on
Sabbatarians.

No others
indicted.

Character of
Sabbatarians.

“Respectfully,

“BENJ. C. FITZHUGH, Justice of the Peace.

“Malvern, Hot Spring county, Arkansas.”

¹ In Arkansas there were over twenty cases of the prosecution of Sabbatarians.

THE CELEBRATED KING CASE.

SUMMARY OF THE CIRCUMSTANCES CONNECTED WITH THE CASE OF THE STATE *v.* KING.¹

Surprising
facts.

That a man should be fined seventy-five dollars and costs for quietly working in his own field in the United States of America may indeed seem a strange story to relate. That he should twice be tried and subjected to fines or imprisonments for substantially the same offense, may appear stranger still ; but such are facts.

Tennessee
Sunday laws.

On the statutes of Tennessee is found a Sunday law which forbids "any merchant, artificer, tradesman, farmer, or other person . . . doing or exercising any of the common avocations of life, or of causing or permitting the same to be done by his children or servants, acts of real necessity or charity excepted, on Sunday." It also provides that "any person who shall hunt, fish, or play at any game of sport, or be drunk on Sunday, as aforesaid, shall be subject to the same proceedings and liable to the same penalties, as those who work on the Sabbath." Code of Tennessee, sections 2289, 2290. From the day of its enactment until recently, this law has been practically a dead letter. Men have been allowed to hunt, fish, shoot, drink, and labor on that day without interference. No one has complained of being disturbed. But of late certain citizens in the western part of the State, residents of Obion county, seem to have discovered the purpose for which this law was made, and found occasion to set in motion this hitherto inoperative section of the code.

The law a
dead letter.

Its revival.

Cause
of revival.

Within the past few years, some of their fellow-citizens becoming convinced that the seventh day is the Sabbath, a small church was organized in the community, whose members observe the seventh day, and believe it to be their privilege, according to the commandments of God, to labor on the other six days of the week. This appears to have led to the discovery of the Tennessee Sunday law, which, unlike the Sunday laws of most other States, makes no exemption in favor of those who conscientiously observe another day.

No exemp-
tion clause.

Feelings
toward
Sabbatarians.

The presence of this new but small organization of Sabbatarians seems not to have been agreeable to certain citizens of other religious belief. They told Mr. King, a member of this new organization, that if he wished to keep the seventh day, and do as he had done, he must move out of the country. He replied that this is a free country ; that

His faith not
to be tolerated.

¹The case of the State *v.* King, brought before the Supreme Court of Tennessee, having attracted much attention and been commented upon by the press in all parts of the country, a brief history of it will be of interest. The account here inserted is written by Mr. W. A. Colcord of the editorial committee of the National Religious Liberty Association, a gentleman who has carefully examined the case in detail.

a man is allowed here to worship God as he understands the Scriptures to teach. But they insisted that he must keep Sunday, and not teach their children by his example that the seventh day is the Sabbath ; and if he did not comply with their wishes, he would be prosecuted. He cited them to the past history of the community, wherein Sunday had not been observed, and yet they had not prosecuted any one for its violation. Their answer indicated that all parties would be compelled to keep it from that time on, whether they kept any other day or not. He argued that if he conscientiously observed the day which he believed God required, they should not then compel him to keep a day in which he did not believe, as that would be tyrannical. He also stated to them that he was a poor man, and could not afford to lose one sixth of his time from the support of his family. But nothing short of submission would be accepted by them.

Claims of
Mr. King.

Not being able to convince him that he was in error, nor to dissuade him from his course, they immediately set about to compass their ends by other means. The Sunday law of the State would accomplish their purpose. Accordingly, a league was formed for the enforcement of the law. The following is a copy of the pledge taken by this league when it was organized :

Formation
of vigilance
committee.

“NOTICE.

“TO WHOM IT MAY CONCERN : That the undersigned citizens of —, being desirous of the welfare of our community, and that peace and harmony may prevail, and that the morals of ourselves and our children may not be insulted and trampled upon by a wilful violation of the Sunday laws of our land ; do this day pledge our word and honor, that we will individually and collectively prosecute each and every violation of the Sunday law of our State that may come under our observation.

Pledge of
the league.

“ December 10, 1888.”

Previous to this, the Sunday law had long been violated by the people of this neighborhood. Scores of men had made Sunday a day for hunting and fishing. And church members of different denominations, as well as non-professors, had made it a rule, if business was urgent, to do common labor upon that day. Now it would be supposed that after the organization of the league, all this would cease, or that every offender would be promptly complained of, and summoned to appear before the court. But what was the result ? The Sunday gaming and shooting went on after the league was organized the same as before. Others besides those who keep the seventh day worked upon their farms on Sunday in a more public and noisy manner than those who observed the seventh day.¹ But not one word of complaint was made about it. When, however, Mr. King went out into his field one Sunday in June, quietly to cultivate his corn, which was so tall at the time as nearly to

Sunday
observance
previously.

Sunday
work in
general.

Sabbatarians
alone com-
plained of.

¹ This point has been prominent in connection with the prosecution of Sabbatarians in nearly every State where they have been arrested.

Mr. King's
first arrest.

hide him from sight, he was promptly arrested, brought before Justice Barker, of Obion county, July 6, 1889, tried, and assessed fines and costs, amounting to twelve dollars and eighty-five cents.¹

A significant
episode.

Another episode occurred about this time which showed the real object of the attack. The seventh-day-keeping church desired a minister to visit them during their quarterly meeting, and hold some services with them. A company on the Kuklux plan was organized, and, armed with shot guns, rifles, and revolvers, went to the place of meeting one Sunday night, and fired into a congregation of men, women, and children. Some fifteen or twenty shots were fired, but as they had to shoot through the wall of the building, no one was hit, though one rifle ball passed exactly through the space behind the desk that had been occupied a moment before by the speaker.²

Kuklux
proceedings.

Shooting
into meeting.

Indictment
of Adventists.

All this failing to accomplish the desired result, Mr. King and two of his brethren, Mr. Callicott and Mr. Stem, who lived across the line in Dyer county, soon learned that they had been complained of before the grand juries of their respective counties, and indictments found against them for laboring on Sunday. Their cases were to be tried in November. Mr. King's trial, which was to be held at Troy, Obion

¹Since judgment has been rendered against Mr. King for working on Sunday by the Supreme Court of the State, some facts have transpired which throw considerable light upon the spirit actuating his prosecutors in his arrest. It seems that his most prominent prosecutor has since proved to be a criminal himself. The report is as follows:

Character
of Mr. King's
principal
prosecutor.

"One of the most prominent persons connected with the arrest and prosecution of R. M. King and other Sabbatarians in Dyer county, Tennessee, was the superintendent and teacher of the Bible class in the Union Sunday-school. It was this man who rode around to the farther side of Mr. King's corn-field, and, when the gentleman whose religious views were so repugnant to the community, emerged from the tall corn at the end of the rows, said he would have to have him arrested, and asked if he did not think it was wrong to break the law of his country. This man who thus posed as religious instructor and guardian of the law, has since been arrested for selling whisky at a public gathering, contrary to the laws of the State, the result of which was a hand-to-hand fight participated in by thirty intoxicated men, one of whom is probably fatally wounded. After his arrest, on pretext of desiring to speak a few moments with his sick wife, he was allowed to enter her room, from which he jumped through the window, and escaped." There were fifteen witnesses against him.

"None so
blind as those
who will not
see."

²Even occurrences like this will not convince the obstinate minds of religio-political reformers that any such thing as religious persecution can happen in this age of the world. Probably nothing will convince them. But whenever we see society or members of society interfering illegitimately with the actions of others, it is time for all persons interested in the liberty and welfare of the nation to protest. As to the limits of the authority of society over the individual, John Stuart Mill says:

First prin-
ciple of gov-
ernment.

"The maxims are, first, that the individual is not accountable to society for his actions, in so far as these concern the interests of no person but himself. Advice, instruction, persuasion, and avoidance by other people if thought necessary by them for their own good, are the only measures by which society can justifiably express its dislike or disapprobation of his conduct."

Effects of
its application.

It is the partial carrying out of this principle that has enabled truth to make such marked advancement in the latter part of the present millennium. And every departure from it, whether by the state or by communities is a retrogradation in civilization, and retards the advancement of truth. God created individuals free agents, and when men interfere with this freedom, they sin against both man and God.

county, was postponed until the spring term of court. The trial of the other two occurred at Dyersburg, Dyer county, November 25, 26, the two cases being tried as one. The jury brought in a verdict of guilty in one case, and disagreed in the other. Judge Flippin sent them back to try again, which only resulted in a like disagreement. The Judge then dismissed them, stating that the evidence would not sustain the verdict rendered in the case of the one they pronounced guilty, and granted a new trial.¹

The trials.

¹The second trial of Mr. L. A. Callicott came off at Dyersburg, Tennessee, July 21, 1890. During this trial the question arose as to the position of the Seventh-day Adventists in reference to paying religious homage to the Sabbath of the dominant cult by resting on the day which they regard as the foundation-stone of their belief. An Adventist minister was summoned, and the following evidence elicited :

Second trial of Mr. Callicott.

TESTIMONY OF REV. MR. MARVIN.

COL. RICHARDSON : Mr. Marvin, where do you live ?

MR. MARVIN : At Trezevant, Carroll county, Tennessee.

COL. RICHARDSON : Are you a minister of the Seventh-day Adventist Church ?

MR. MARVIN : Yes, sir.

COL. RICHARDSON : What is the belief and practice of your church concerning the Sabbath ?

MR. MARVIN : We believe the seventh day is the Sabbath of the Lord, as brought to view in Exodus, twentieth chapter, and keep it as such ; and with James (second chapter, twelfth verse), we believe this to be a law of *liberty*, and that we have a heaven-born right to obey it in any State or nation.

Examination of an Adventist minister.

COL. RICHARDSON : You regard it as a Christian duty to keep that day holy, and no other ?

MR. MARVIN : Yes, sir.

COL. RICHARDSON : Does your church hold that the working upon six days is as imperative as the keeping of the seventh ?

MR. MARVIN : No, sir.

Belief of Adventists.

CROSS-EXAMINATION.

ATTORNEY-GENERAL : Mr. Marvin, what is the position of your people as to working six days ?

MR. MARVIN : They have never officially or publicly expressed any rule concerning it.

ATTORNEY-GENERAL : Do your people teach that it is a sin to rest on Sunday ?

MR. MARVIN : We believe that when required to —

ATTORNEY-GENERAL : But answer my question.

MR. MARVIN : I will, sir, if you will give me opportunity.

ATTORNEY-GENERAL : Well, go on, then.

MR. MARVIN : We believe that when *required* to rest on Sunday by laws based upon the religious aspect of the day, it would be wrong to obey them.

Views of Sunday rest.

ATTORNEY-GENERAL : Do laws requiring men simply to *rest* tend to enforce religion or worship ?

MR. MARVIN : Yes, sir, if such laws be *Sunday* laws.

ATTORNEY-GENERAL : On what grounds ?

MR. MARVIN : On the grounds that there is not now, nor ever was, a Sunday law that did not have for its basis the religious character of the day.

ATTORNEY-GENERAL : But it would not interfere with *your* religion to rest on Sunday ?

MR. MARVIN : Yes, sir. Sunday-keeping is a religious act — an act of worship. It would be conforming to an opposing religion.

Sunday observance an act of worship.

The minister was then excused, and the Attorney-General yielded the case, Judge Flippin charging the jury to bring in the verdict, "not guilty."

Mr. King's
trial.

His
indictment.

Witnesses
examined.

Evidence
not admitted.

March 6, 1890, Mr. King's trial came up in court again at Troy, before Judge Swiggart, Attorney-General Bond appearing for the State, and Colonel Richardson for the defendant. The indictment against Mr. King was based on the following charges: "Plowing on Sunday, and doing various other kinds of work on that day [June 23] and on Sundays before that day without regard to said Sabbath-days." In this it was claimed that this was "a disturbance to the community in which done, was offensive to the moral sense of the public, and was and is a public nuisance."

Six witnesses were examined: five for the prosecution—Robert Cole, W. W. Dobbins, Alex. Wright, Wm. Oakes, and J. T. Marshall; and one for the defense—Squire J. A. Barker. All testified to the good character of the defendant, Mr. King, as a quiet, peaceable, law-abiding citizen, with the one exception of working on Sunday. The defendant offered to show that he had been brought before Squire Barker, and fined for the principal offense charged in the indictment (working on June 23), and that he had paid his fine; but the court would not permit him to prove it. The examination of the witnesses showed that two of them, members of a popular church, belonged to the organization, the members of which had bound themselves together by a written agreement to prosecute every violation of the Sunday laws. Colonel Richardson then offered to prove that men in the same neighborhood where Mr. King lives had cut wheat with a self-binder, rafted logs, and done other work on Sunday, for which they had never been called in question; but the court would not admit the evidence.

The following testimony of the witnesses in this trial substantiates the above statements, and shows that the sole cause for the prosecution was a dislike on the part of certain witnesses to the religious views of the defendant:

TESTIMONY OF MR. COLE.

Mr. King's
work.

ATTORNEY-GENERAL: Did you see Mr. King engaged in plowing or doing any kind of farm work in District No. 9, Obion county, about the fourth Sunday in June last?

MR. COLE: I did.

ATTORNEY-GENERAL: What sort of work was he doing, Mr. Cole?

MR. COLE: He was plowing in the field.

ATTORNEY-GENERAL: Plowing corn?

MR. COLE: Yes, sir.

ATTORNEY-GENERAL: That is part of his regular work, farming?

MR. COLE: Yes, sir.

ATTORNEY-GENERAL: That was his means of making a living?

MR. COLE: Yes, sir.

ATTORNEY-GENERAL: That was on Sunday?

MR. COLE: Yes, sir.

ATTORNEY-GENERAL: Was there any disturbance or excitement of any kind produced by his working there, plowing there?

No feeling
engendered.

MR. COLE : Well, sir, it excited a good deal of comment, and gave offense to the sense of propriety of those who were on their way to the church. "Disturbance," produced.

ATTORNEY-GENERAL : Was there any feeling produced or engendered in the neighborhood by reason of that fact ?

MR. COLE : No, sir ; I cannot say that there was.

ATTORNEY-GENERAL : Only a determination on the part of some that he should be prosecuted for it ?

MR. COLE : Yes, sir.

CROSS-EXAMINATION.

COL. RICHARDSON : Of what church are you a member ?

MR. COLE : The Methodist Church.

COL. RICHARDSON : Had there been a combination or a written agreement entered into between you and the parties that you have named, and others, that you would prosecute all violations of the Sunday law ? Mr. Cole a member of the league.

MR. COLE : Yes, sir ; there had.

COL. RICHARDSON : Have you ever had anybody else indicted, or arrested, or charged except Seventh-day Adventists ?

ATTORNEY-GENERAL : I object to that.

COL. RICHARDSON (to the court) : I am asking it with a view to show the animus of these witnesses and their feelings against this particular man. I expect to show why Mr. Cole, as he said, had entered into a compact to prosecute all parties who violated the Sunday law. I expect to prove by Mr. Cole, or if not by him, by others, that divers parties who are not Seventh-day Adventists cut wheat, did all sorts of work on the Sabbath, desecrated it generally, and that no attempt has been made to prosecute or interfere with any one except this remnant of Israel. Object of cross-examination.

THE COURT : I sustain the Attorney-General's objection.

COL. RICHARDSON (to the witness) : Did you see the defendant, Mr. King, working on Sunday ?

MR. COLE : Yes, sir ; I saw him plowing in his field on Sunday, the twenty-third day of June last.

COL. RICHARDSON : It did not disturb you any, did it ?

MR. COLE : Yes, sir ; of course it did ; it was very annoying to my feelings.¹ "Annoyance" to feelings.

¹ John Stuart Mill presents this kind of intolerance in its true light. He says :

"There are many who consider as an injury to themselves any conduct which they have a distaste for, and resent it as an outrage to their feelings ; as a religious bigot, when charged with disregarding the religious feelings of others, has been known to retort that they disregard his feelings, by persisting in their abominable worship or creed. But there is no parity between the feeling of a person for his own opinion, and the feeling of another who is offended at his holding it ; no more than between the desire of a thief to take a purse, and the desire of the right owner to keep it. And a person's taste is as much his own peculiar concern as his opinion or his purse. . . . The evil here pointed out is not one which exists only in theory ; and it may perhaps be expected that Argument of Mr. Mills.

Reason for
his annoyance.

COL. RICHARDSON : On what account ?

MR. COLE : Because I thought it a wilful and intentional slight to our community.

COL. RICHARDSON : On what grounds ?

MR. COLE : On the ground that it was a violation of laws, both sacred and civil.

I should specify the instances in which the public of this age and country improperly invests its own preferences with the character of moral laws. I am not writing an essay on the aberrations of existing moral feeling. That is too weighty a subject to be discussed parenthetically, and by way of illustration. Yet examples are necessary, to show that the principle I maintain is of serious and practical moment, and that I am not endeavoring to erect a barrier against imaginary evils. And it is not difficult to show, by abundant instances, that to extend the bounds of what may be called moral police, until it encroaches on the most unquestionably legitimate liberty of the individual, is one of the most universal of all human propensities.

Illustration
of illegitimate
interferences
with rights of
individuals.

“As a first instance, consider the antipathies which men cherish on no better grounds than that persons whose religious opinions are different from theirs, do not practice their religious observances, especially their religious abstinences. To cite a rather trivial example, nothing in the creed or practice of Christians does more to envenom the hatred of Mahometans against them, than the fact of their eating pork. There are few acts which Christians and Europeans regard with more unaffected disgust, than Mussulmans regard this particular mode of satisfying hunger. It is, in the first place, an offense against their religion ; but this circumstance by no means explains either the degree or the kind of their repugnance ; for wine also is forbidden by their religion, and to partake of it is by all Mussulmans accounted wrong, but not disgusting. Their aversion to the flesh of the ‘unclean beast’ is, on the contrary, of that peculiar character, resembling an instinctive antipathy, which the idea of uncleanness, when once it thoroughly sinks into the feelings, seems always to excite even in those whose personal habits are anything but scrupulously cleanly, and of which the sentiment of religious impurity, so intense in the Hindoos, is a remarkable example. Suppose now that in a people of whom the majority were Mussulmans, that majority should insist upon not permitting pork to be eaten within the limits of the country. This would be nothing new in Mahometan countries. Would it be a legitimate exercise of the moral authority of public opinion ? and if not, why not ? The practice is really revolting to such a public. They also sincerely think that it is forbidden and abhorred by the Deity. Neither could the prohibition be censured as religious persecution. It might be religious in its origin, but it would not be persecution for religion, since nobody’s religion makes it a duty to eat pork. The only tenable ground of condemnation would be that with the personal tastes and self-regarding concerns of individuals the public has no business to interfere.

Another
illustration.

“To come somewhat nearer home : the majority of Spaniards consider it a gross impiety, offensive in the highest degree to the Supreme Being, to worship him in any other manner than the Roman Catholic ; and no other public worship is lawful on Spanish soil. The people of all Southern Europe look upon a married clergy as not only irreligious, but unchaste, indecent, gross, disgusting. What do Protestants think of these perfectly sincere feelings, and of the attempt to enforce them against non-Catholics ? Yet if mankind are justified in interfering with each other’s liberty in things which do not concern the interests of others, on what principle is it possible consistently to exclude these cases ? or who can blame people for desiring to suppress what they regard as a scandal in the sight of God and man ? No stronger case can be shown for prohibiting anything which is regarded as a personal immorality, than is made out for suppressing these practices in the eyes of those who regard them as impieties ; and unless we are willing to adopt the logic of persecutors, and to say that we may persecute others because we are right, and that they must not persecute us because they are wrong, we must beware of admitting a principle of which we should resent as a gross injustice the application to ourselves.”

COL. RICHARDSON : Then it was an excitement of your religious feelings, and repulsive to your views of Christianity?

Religious
views disre-
garded.

MR. COLE : Yes, sir.

COL. RICHARDSON : You regarded it as an insult purely because it was on the Sunday?

MR. COLE : Yes, sir.

COL. RICHARDSON : How long have you known Mr. King?

MR. COLE : For about twenty or twenty-five years.

COL. RICHARDSON : What was the general character of the defendant as a peaceable, quiet, law-abiding citizen, up to the time of this indictment?

Character
of Mr. King.

MR. COLE : It was good.

COL. RICHARDSON : Is he a pious, Christian gentleman?

ATTORNEY-GENERAL : I object to that question.

THE COURT : I sustain the objection. The question is not relevant.

His religious
views.

COL. RICHARDSON : Your Honor, I think it is relevant, and I submit to your Honor that I propose to prove that he is a member of a church which holds that Saturday, the seventh day, is the Sabbath, and that he observes it. I think I have a right to do this for two purposes : first, to show that he did not intentionally violate the law ; second, to show the intent and purpose for which he did it, as a matter of mitigation. If this action can be sustained at all, and if this jury can find any verdict at all, it is within the discretion and power of the jury to impose any fine above fifty dollars that they may see proper. And I think that as a matter of mitigation I have a right to show to the jury that this man belongs to a church that professes certain tenets of religious faith, amongst which is that the seventh day is the Sabbath ; and that he observes that day as the Sabbath. I think I have a right to prove this,—not, I grant you, as a defense to the action, or as a decision of it, but in mitigation of any fine.

THE COURT : I do not think his religious belief or religious connection with any church or sect has anything to do with this lawsuit, and sustain all objections tending to prove anything of that sort.

Testimony
overruled.

COL. RICHARDSON : And your Honor declines to allow me to prove it, even as a matter of mitigation?

THE COURT : Yes, sir.

COL. RICHARDSON (to the witness) : Are you prejudiced against the defendant because of his religious views ?

MR. COLE : I can say this, that I do not favor his religious views.

Here the court objected to any further questions on this point from the defense.

TESTIMONY OF MR. DOBBINS.

COL. RICHARDSON : How long have you known Mr. King ?

MR. DOBBINS : I have known Mr. King for seven, eight, nine, or ten years — somewhere along there.

Mr. King's
reputation.

COL. RICHARDSON : Do you know what his reputation and standing are in that community since you have known him ? How do the people regard him ?

MR. DOBBINS : They regard him as a pretty clever sort of fellow.

COL. RICHARDSON : Stands well in the community there ?

MR. DOBBINS : Yes, sir ; I think he did.

COL. RICHARDSON : You had him arrested ?

MR. DOBBINS : I do not deny that.

COL. RICHARDSON : Where did you have him carried ?

MR. DOBBINS : Before Squire Barker.

COL. RICHARDSON : I propose, if your Honor please, to ask him if he did not belong to an association down there that had formed an agreement to prosecute all violations of the Sabbath.

THE COURT : He may answer that.

MR. DOBBINS : I signed an article of that kind, sir.

COL. RICHARDSON : Did you ever indict, or have arrested, or prosecute, any other man than this ? (Answer — Never.)

ATTORNEY-GENERAL : I object to that.

COL. RICHARDSON : In order to show the spirit of this witness, I propose to ask him, if your Honor please, if he ever had any man arrested in accordance with their undertaking ; whether he ever had anybody arrested except some persons belonging to this denomination to which this defendant belongs.

ATTORNEY-GENERAL : Hold on, Mr. Dobbins, I object to that.

THE COURT : I think the objection is well taken.

COL. RICHARDSON : I am not in the habit of having a controversy with the court. I always try to submit gracefully. But it strikes me like this, if your Honor please, that when I have shown that Mr. Cole, and Mr. Dobbins, and some others, though claiming to be law-abiding citizens, have formed a combination and entered into a solemn agreement to prosecute all violators of the Sunday law, but have prosecuted only those of a certain class, they have in this arrogated to themselves the position of guardians *par excellence*, of these Christian people, and they intend to suppress them. Now, he is the prosecutor in this case. He has had this identical man arrested, and carried before a justice of the peace about this identical matter. Now, it does strike me that it is legitimate to show his feeling toward this man in this trial. And I intend to show that other people have worked there — men of their religious views — in other pursuits, that they have worked there Sunday after Sunday, under his knowledge, and with the knowledge of this association to which he belongs ; and that the men belonging to these Seventh-day Adventists are the only men that he has ever interrupted or called to account for violation of the Sabbath law. I think it is fair and legitimate evidence to go to the jury to show the motives that have prompted this prosecution. I submit to your Honor that I have a right to show it.

THE COURT : I do not think that what you propose to call out by the question put to the witness is competent matter.

Spirit actu-
ating prose-
cutors of
Sabbatarians.

The cross-examination of the three following witnesses developed the fact that two of them were going to another part of the neighborhood after a cow, and the other was engaging harvest hands, when they saw Mr. King at work on Sunday. They seemed to think that it was perfectly legitimate for them to engage in secular work on Sunday, even in the most public manner, but if a Sabbatarian works quietly on his own premises, they are at once "shocked," as witness Wright stated he was.

Witnesses
who worked
on Sunday.

TESTIMONY OF MR. WRIGHT.

COL. RICHARDSON : How long have you known this defendant?

MR. WRIGHT : I suppose I have known him some twelve or fifteen years.

COL. RICHARDSON : Do you know his reputation and standing as a moral, upright, law-abiding citizen in that community before the finding of this indictment?

Mr. King's
reputation.

MR. WRIGHT : I have never heard anything great against Bob until this work.

COL. RICHARDSON : Was his reputation that of a peaceable, law-abiding, orderly man?

MR. WRIGHT : I believe it was, up to that time, sir; so far as I know, it was.

COL. RICHARDSON : When did you see him working first?

MR. WRIGHT : Well, as to the exact time, if you call for it, I have it right here (striking his breast).

COL. RICHARDSON : You have it written down?

MR. WRIGHT : Yes, sir.

COL. RICHARDSON : Pull it out, and let me see it.

MR. WRIGHT : I got it just there — got it May 12.

COL. RICHARDSON : When did you put that down there?

MR. WRIGHT : Something near the time of the occurrence.

COL. RICHARDSON : How came you to put it there?

MR. WRIGHT : Because I supposed they were going to stop their working on Sunday.

People tired
of Sunday
work.

COL. RICHARDSON : What made you suppose that?

MR. WRIGHT : Because the general community was tired of the work.

COL. RICHARDSON : Who was tired of it?

MR. WRIGHT : The general people.

COL. RICHARDSON : How do you know?

MR. WRIGHT : I heard them say so.

COL. RICHARDSON : Who did you hear say so?

MR. WRIGHT : Various ones.

COL. RICHARDSON : Name them.

MR. WRIGHT : Wright, Pardue —

COL. RICHARDSON : Which Wright?

MR. WRIGHT : Bill Wright.

Relation
to witness
Wright.

COL. RICHARDSON : What relation is he to you ?

MR. WRIGHT : We are cousins.

COL. RICHARDSON : When did he leave there ?

MR. WRIGHT : In January.

COL. RICHARDSON : He left in January, and was tired of plowing that was done in May !

MR. WRIGHT : He was tired of work, I suppose, that had been done before that time.

COL. RICHARDSON : How do you suppose that ?

MR. WRIGHT : Well, I suppose he was.

COL. RICHARDSON : Why did you write that down in your book ?

Intentions
to prosecute.

MR. WRIGHT : I will tell you why I did it. The people in the general community were tired of the work that had been done before, and I was right there adjoining him, where I could see him, and I knew that I would be called to court, as I am, and I set it down.

COL. RICHARDSON : Now who was tired besides Mr. Wright ?

MR. WRIGHT : I was, myself, and Mr. Cole, Dobbins, and Pardue.

COL. RICHARDSON : What did you say you saw him doing in May ?

MR. WRIGHT : He was hoeing corn, I believe [reading from the book he had produced] — yes, he was hoeing corn.

COL. RICHARDSON : How long did you see him hoeing ?

MR. WRIGHT : Well, I was passing —

COL. RICHARDSON : Where were you going ?

MR. WRIGHT : I was passing down the road, and then I passed back up the road. I went down to my field.

COL. RICHARDSON : What were you doing down to your field ?

MR. WRIGHT : I went down to see if my corn was coming up.

COL. RICHARDSON : When was the next time you saw any work done ?

MR. WRIGHT : Nineteenth of May.

COL. RICHARDSON : About how long did you see him ?

MR. WRIGHT : I do not know exactly ; about five minutes, may be.

COL. RICHARDSON : When was the next time ?

MR. WRIGHT : June 2.

COL. RICHARDSON : When did you write that down ?

MR. WRIGHT : At the time when it was done.

COL. RICHARDSON : Wrote those all down the time it was done ? keeping books ?

MR. WRIGHT : Yes, sir ; keeping books for my own convenience.

COL. RICHARDSON : Who else saw that besides you ?

MR. WRIGHT : A man by the name of Oaks saw it.

COL. RICHARDSON : Where were you when you saw it ?

MR. WRIGHT : We were riding down the road.

COL. RICHARDSON : What for ?

MR. WRIGHT : I was going to my father-in-law's.

COL. RICHARDSON : What were you going there for ?

MR. WRIGHT : I was going there to get a cow that belonged to me, sir.

COL. RICHARDSON : Drove the cow home that day ?

MR. WRIGHT : I did, sir.

COL. RICHARDSON : Necessity, was it ?

MR. WRIGHT : Yes, sir ; it was a case of necessity.

COL. RICHARDSON : What was Mr. Oaks doing ?

MR. WRIGHT : Helping me drive the cow.

COL. RICHARDSON : That is what you went for ?

MR. WRIGHT : Yes, sir.

COL. RICHARDSON : How long did you see Mr. King harrowing ?

MR. WRIGHT : No longer than I was just passing by.

COL. RICHARDSON : It did not take him as long as it took you to get the cow, did it ?

MR. WRIGHT : I do not know whether it did or not.

COL. RICHARDSON : Well, that plowing and hoeing — that did not disturb you in any way, did not hurt you, damage you, or hinder you in any way, did it ?

MR. WRIGHT : I did not consider that I was hurt by it.

COL. RICHARDSON : It did not incommode you in any way, did it ?

MR. WRIGHT : Not further than this : I did not want to raise my children up there where this work was going on.

COL. RICHARDSON : How did this work disturb you ?

MR. WRIGHT : It disturbed me in this way : it was something that I was not used to ; it sort of came up in this way, that it was so unexpected at the time, it shocked me.

COL. RICHARDSON : Shocked you ?

MR. WRIGHT : Yes, sir.

COL. RICHARDSON : How long did the shock continue ?

MR. WRIGHT : Not very long.

COL. RICHARDSON : Who else was shocked besides you ?

MR. WRIGHT : I do not know of any one else.

COL. RICHARDSON : How many times did it shock you ?

MR. WRIGHT : I acknowledge, sir, that it did not shock me but one time.

COL. RICHARDSON : Create any disturbance at the time ?

MR. WRIGHT : Not at the time, that I saw.

COL. RICHARDSON (to the court) : Well, I propose, if your Honor please, to ask this man, too, what he knows about their working, cutting wheat, etc., there in that country on Sunday.

THE COURT : I will make the same ruling.

COL. RICHARDSON : So it will go on record if it becomes necessary ?

THE COURT : Yes, sir.

TESTIMONY OF MR. OAKS.

COL. RICHARDSON : Who else saw Mr. King when you saw him ?

MR. OAKS : Alex. Wright saw him at the time he was harrowing.

COL. RICHARDSON : Where were you going that day, Mr. Oaks ?

MR. OAKS : I was going with Mr. Wright.

Mr. Dob-
bins's secular
Sunday work.

Witness
not injured.

Feelings
shocked, how-
ever.

No disturb-
ance created.

Work of
witnesses.

COL. RICHARDSON : What was he going for ?

MR. OAKS : He was going to look after a cow.

COL. RICHARDSON : Did you help drive the cow ?

MR. OAKS : Yes, sir. He turned her out, and we followed along behind her.

COL. RICHARDSON : Did that disturb anybody ?

MR. OAKS : It did not disturb me.

COL. RICHARDSON : Did not disturb anybody else, did it ?

MR. OAKS : No, sir.

COL. RICHARDSON : How long was Mr. King engaged at work ?

MR. OAKS : I do not know.

COL. RICHARDSON : It was not calculated to disturb anybody, was it ?

MR. OAKS : No, sir ; he was not making any noise about it at all.

Mr. King
working
quietly.

COL. RICHARDSON : Did your ever see him at work, doing any kind of work, performing any secular labor on any of the public roads, or at any public places on Sunday ?

MR. OAKS : No, sir ; never did.

COL. RICHARDSON : Whatever you have seen him do was on his own private premises ?

MR. OAKS : Yes, sir.

TESTIMONY OF MR. MARSHALL.

COL. RICHARDSON : Did this work disturb you ?

MR. MARSHALL : No, sir ; it did not disturb me any.

COL. RICHARDSON : Did not annoy you in any way ?

Witness not
disturbed.

MR. MARSHALL : No, sir ; did not annoy me.

COL. RICHARDSON : Where were you going ?

MR. MARSHALL : I was going up to Sunday-school.

COL. RICHARDSON : Did you see him at work ten minutes ?

MR. MARSHALL : No, sir ; I do not know that I did.

Work not
calculated to
disturb any
one.

COL. RICHARDSON : Was he doing anything that was calculated to annoy, injure, vex, harass, or disturb anybody ?

MR. MARSHALL : Not as I know.

COL. RICHARDSON : Who was with you at the time he was harrowing ?

MR. MARSHALL : Mr. Johnson — Dick Johnson.

COL. RICHARDSON : It did not disturb Dick, did it ?

MR. MARSHALL : No, sir.

COL. RICHARDSON : Where were you going when you saw him harrowing ?

MR. MARSHALL : To another town.

COL. RICHARDSON : That was on Sunday ?

MR. MARSHALL : Yes, sir.

COL. RICHARDSON : What were you going for ?

Work
of witness.

MR. MARSHALL : To see about hiring some hands.

COL. RICHARDSON : Did these other witnesses here know it ? (Answer — Mr. Cole knew it.)

ATTORNEY-GENERAL : I object to that.

THE COURT : I sustain the objection.

Objection made.

COL. RICHARDSON : Do you know what Mr. King's reputation was in the community down there as a peaceable, orderly, quiet, law-abiding citizen before the finding of this indictment ?

MR. MARSHALL : Yes, sir.

COL. RICHARDSON : What was it, good or bad ?

MR. MARSHALL : It was good.

Mr. King's reputation.

Justice Barker was then put upon the stand for the defense, and testified that he had known Mr. King for about twenty-five years, and that his general reputation, with the exception of the Sabbath part of it, was as good as anybody's in the community. But the court refused to allow him to testify to the fact that on the affidavit of Mr. Dobbins he issued a warrant against Mr. King for working on Sunday, June 23 ; that Mr. King was arrested, brought before him, and fined for this ; that Mr. King issued a *mittimus* committing him to jail ; and that fine and costs were collected of him. This closed the testimony in the case.

Previous conviction of Mr. King for same offense.

SUMMARY OF COLONEL RICHARDSON'S SPEECH.

Colonel Richardson then made a plea before the jury, in which he claimed that this indictment was a stroke at the rights of man, and subversive of religious liberty. He held that it was in conflict with the Bill of Rights which the State had adopted as article one of its Constitution, the third section of which says, "No human authority can, in any case whatever, control or interfere with the rights of conscience ; and that no preference shall ever be given by law to any religious establishment or mode of worship." From this he argued that to declare that certain acts are a nuisance because they are obnoxious to certain religious views, or a disturbance to certain religious sentiments, is nothing less than the giving of preference denied by this section. He held that the Sunday law was in conflict with the Constitution of the State, and for that reason inoperative. He claimed that if an act is a nuisance because done on Sunday, then it is because it is obnoxious to some man's religious views ; and if obnoxious on this account, then it is religious legislation — legislation in favor of some sect, some mode of worship, which is in direct contravention of the Bill of Rights which are the declaration of the unalterable and inalienable rights of all men. He asked why it is not as shocking, as immoral, and as indecent for a man to work on Saturday in violation of the belief of the Sabbatarian, as it is for the Sabbatarian to work on Sunday. He also stated that so far as the act of the defendant considered apart from the day was concerned, no man could disapprove of it. It was *the day*, then, and *not the act* that was the question involved.¹

Rights of man infringed.

Conviction unconstitutional.

Religious preference shown.

A difference of gigantic proportions !

Sunday sacredness the pivotal point.

¹This fact is admitted in some of the decisions on the unlawfulness of Sunday labor. Mr. Chief Justice Ruffin of the Supreme Court of North Carolina, in 4 Iredell, 403, said :

Why
are Advent-
ists alone
arrested?

Mr. King's
labor dis-
turbed no one.

In answer to the claim that this was not persecution on account of religious faith, he asked why it was that only those of this particular faith had been singled out, while others who had violated the Sunday law as openly as they, had been allowed to go undisturbed. He called attention to the fact that the defendant's labor was performed in no public place, that it had disturbed no worshipping congregation, nor interfered with any man's business or rights; and yet these men had hounded him like sleuth-hounds following a flying fugitive. In this indictment he said the jury were asked to declare as a crime an act on Sunday which on Monday would be commendable and worthy of all encouragement and approbation. "Woe the day," said he, "when the State or this government shall allow the church to put its hand upon the citizen, upon the conscience of the citizen, or upon the property of the citizen. Sunday laws were the beginning of the power of the Spanish Inquisition in that mighty machinery invented by Ignatius Loyola, and the establishment of them here in this country would be but the beginning and elevation of a like religious body to political power and prominence in the United States. It is dangerous."

SUMMARY OF ATTORNEY-GENERAL BOND'S SPEECH.

Attorney-
General's
appeal to
prejudices
of jury.

The speech of the prosecuting attorney was a tirade against the religious sect of which the defendant was a member, and a reflection upon Northern men, although Mr. King is not a Northern man, all of which was well calculated to arouse the prejudices of the jury. It was so saturated with obscenity and blackguardism that it would not be in place to repeat it entire. The main effort of the speaker was to confound the defendant and those of his religious faith with the Mormons. The following is that part of the speech which is the least objectionable :

His speech.

YOUR HONOR, AND GENTLEMEN OF THE JURY: . . . There were a lot of fellows in the olden time — some Adventists, or Seventh-day Advents, or Mormons, or Mayflower fellows, I do not care which you call them — that believed in human sacrifices, carrying them to the altar, and burning them up as an incense.

COL. RICHARDSON : They were Sunday fellows.

Tirade
against Sab-
batarians.

ATTORNEY-GENERAL : They were the Mormons or Adventists ; that is who they were, taking the children and burning them on the altar as an incense to God Almighty. If you want two women, or four women,

Why Sun-
day work
disturbs us.

"The truth is, that it offends us, not so much because it disturbs us in practising for ourselves the religious duties, or enjoying the salutary repose or recreation of that day, as that it is, in itself, a breach of God's law, and a violation of the party's own religious duty."

The all-
important
point.

Likewise, in *Shover v. the State*, a decision upholding Sunday laws, *ante* page 149, the court said : "It is not simply the act of keeping open a grocery, but the keeping of it open on Sunday, that forms the head and front of the offense; and when it is alleged to have been done on *that day*, the description is perfect."

Basis of
Sunday laws.

All Sunday legislation and all the prosecutions for Sunday labor in the history of our nation, have resulted from religious regard for the Sunday as a day of rest.

why, in the name of God, stay in Salt Lake City where you can have them. Suppose they should come from the same section of that country, Colonel Richardson would say, "You have no right to interfere with the rights of conscience of this people; and you can't interfere with them, because the Bill of Rights says that every man in this country has a right to worship God according to the dictates of his conscience." Burn children, sleep with a dozen women, hang fellows that had long hair, and everything else of that sort! No, sir; away with all such foolishness, and everything of that sort! I do not care anything about the Adventists, or Mormons, whether they are right or not. But when they come here, they must walk up to the rack, and eat the same fodder that our folks eat.

Tirade
against Sab-
batarians.

COL. RICHARDSON: If your Honor please, I do not think you allowed me any such latitude as that.

Language
objected to.

THE COURT: I do not understand that the Attorney-General is charging the defendant as being himself a Mormon, but as illustrating the position of the defense.

Objection
overruled.

COL. RICHARDSON: But the Mormons were Sunday observers.

ATTORNEY-GENERAL: Colonel Richardson knows more about the Mormons than I do.

COL. RICHARDSON: I merely wish to take an exception to it.

Exception
taken.

ATTORNEY-GENERAL: I do not know whether this short-hand fellow is a Mormon or an Adventist. Got a short-hand fellow to take down what I say. Not satisfied with worshipping God! Oh, no; but with your short-hand reporters, your Mormons, and your Adventists, you want to corrupt not only the whole morals of the country, but you want to control the courts of the country. . . . I wish to God we had more Methodist churches, and more Baptist churches, and more Presbyterian churches, and more Episcopal churches, and more Catholic churches, until every man was brought under the benign influences of these churches; but in the name of God, I do not want any of these Advent churches, or Mormon churches. Guiteau, when he had a revelation from God (and I expect he had a Seventh-day Adventist lawyer to defend him), took a pistol, and shot down the ruler of this nation, and they hung him; and that is what they ought to do with all these fellows. I have no respect for men like that. These fellows never heard from God, and the probabilities are that they never will. Something is said in the Bible about somebody that came up and knocked at the gate. He said I never knew you, I never knew you at all. That is about the way with these fellows. Not satisfied with working on Sunday, and keeping half a dozen women, they come down here and want to save us, and have us keep half a dozen women. . . .

Tirade
continued.

Attorney-
General
posing as
St. Peter!

The obscene and filthy utterances of the attorney, which have been omitted, evoked considerable merriment among the visitors in the courtroom, the jury, and especially among the leading witnesses for the prosecution, who were devout church members.

Merriment
provoked.

STATEMENT OF JUDGE SWIGGART.

Fine
imposed.

The jury was out only about half an hour, when they returned a verdict of guilty, and assessed the fine at seventy-five dollars. The counsel for the defendant took exception to the rulings of the court, and the charge given to the jury, and moved a new trial. In refusing to grant a new trial, the Judge said :

Statement
of court.

“The law is clear. I charged it properly. The fine is a reasonable one, and one well warranted. The laws are made to be obeyed ; and Mr. King and all other men should and must obey them, or leave the country. I make these remarks that they may know that I intend to have the laws strictly enforced in the future. Mr. King and his brethren have a right to keep another day if they choose, but as Christian men, it is their duty to obey the laws of the State, and they must do it.”

Sabbatarians
must observe
Sunday.

An appeal was taken to the Supreme Court of the State.

Case
appealed.
Character
of trial.

The whole trial from beginning to end is a clear case of religious persecution, gendered wholly by denominational spite and sectarian animosity. While the prosecution claimed that it was not a question of religion, the vindictive speech of Attorney-General Bond, as well as the rulings of the court and the testimony of the witnesses, shows that it was incited by denominational prejudice throughout.

Evidence
of intolerance.

In expressing a desire for more of certain churches and a dislike for certain others, the Attorney-General betrayed the fact that this was simply a religious question,—a question between the churches. In this, too, he seems to have forgotten how some of these very churches of which he desires more, were, in their early history, themselves looked down upon by the old established churches of those times ; how the pioneers of Methodism, the Wesleys, George Whitfield, Adam Clarke, and others, trod a rugged path because of this ; how the clergy of England closed their church doors against them, denounced them, and stirred up the people against them ; how even mobs were raised to suppress their preaching, and their followers were arraigned before courts, called “courts of justice,” but were such only in name ; for, like too many of to-day, justice had no place in them.

Persecution
of the past.

PERSECUTION OF DR. ADAM CLARKE.

Dr. Clarke, in his comments on Luke iv, 30, gives an account of an experience he had while preaching one evening at St. Aubin, in the island of Jersey, he being the missionary to which reference is made. It is the experience of almost every small and unpopular denomination.

Experience
of Dr. Adam
Clarke.

“A missionary who had been sent to a strange land to proclaim the gospel of the kingdom of God, and who had passed through many hardships, and was often in danger of losing his life through the persecutions excited against him, came to a place where he had often before, at no small risk, preached Christ crucified. About fifty people, who had received good impressions from the word of God, assembled. He

began his discourse ; and after he had preached about thirty minutes, an outrageous mob surrounded the house, armed with different instruments of death, and breathing the most sanguinary purposes. Some that were within shut the door ; and the missionary and his flock betook themselves to prayer. The mob assailed the house, and began to hurl stones against the walls, windows, and roof ; and in a short time almost every tile was destroyed and the roof nearly uncovered, and before they quitted the premises, scarcely left one square inch of glass in the five windows by which the house was enlightened. While this was going forward, a person came with a pistol to the window opposite to the place where the preacher stood (who was then exhorting his flock to be steady, to resign themselves to God, and trust in him), presented it at him, and snapped it ; but it only flashed in the pan ! . . . They assembled with the full purpose to destroy the man who came to show them the way of salvation ; but he, passing through the midst of them, went his way.”

Attack
of mob.

Dr. Clarke styles this sort of treatment persecution. What but persecution can the very similar treatment of the Sabbatarians in Tennessee be called ? or is it an essential of persecution that it should always be in the past ?

What is
persecution ?

PERSECUTION OF THE BAPTISTS.

It will do now to talk about desiring more Baptist churches, when that denomination, by indomitable courage and perseverance, has maintained its doctrines against the fiercest opposition, until it has come to be one of the largest in the United States. But the day was when Baptists were ridiculed, despised, and persecuted as bitterly as are the observers of the seventh day whom Attorney-General Bond so berates ; when they, with the Quakers, were hated and hunted like wolves. The Baptists have not forgotten when Roger Williams in 1636 was driven from home, wandered in the woods for weeks in the dead of winter, and was taken in by the Indians, and given the hospitalities denied him by his fellow white men ;—have not forgotten when Massachusetts in 1644 made a law to banish them from that colony. They have not forgotten all these cruelties which they suffered in an early day for conscience' sake. The “Christian Herald” of October 3, 1889, a Baptist paper, says :

Feeling
toward Bap-
tists formerly.

Persecution
of Roger
Williams.

“See from the sufferings endured by our Baptist fathers, at what cost this liberty we now enjoy was obtained, and how joyfully those fathers paid the price in the dungeon and at the whipping-post. They counted life itself a thing of no value when called to abandon Baptist principles.”

Suffering
endured by
Baptists.

Much the same might be related of the early history of other denominations. About the year 1675 two Presbyterian ministers, Rev. Francis Makemie and Rev. John Hampton, were arrested and imprisoned for two months for preaching one sermon each in New York, and finally released after paying three hundred dollars for the expenses of the trial.

Similar
treatment
of other de-
nominations.

A lesson not
yet learned.

It is an old mistake to seek to crush out honest convictions by fire and sword, and one which it seems the world should have learned by this time. The great trouble is, many of our legislators, courts, and lawyers do not know the history of nations, not even the early history of our own country; and consequently they are repeating old experiments, that not only have failed ages ago, but have ended in the direst cruelties. It would be fortunate for this country if every citizen would look into the political history of the past few centuries and examine carefully the evolution of the American political system, and learn that it is not the business of courts or legislatures to interfere with things purely religious.

Mr. King's
prosecution.

The unjust results of this trial come from the existence of a rigid Sunday law on the statute books of Tennessee, which Mr. King's fellow-citizens, who are entitled to no more protection from the government or the State than himself, have seen fit to take advantage of on account of a difference of religious belief. This manifest injustice should cause not only those who have been the immediate promoters of the prosecution to blush for shame, but every one who is helping forward any movement to have laws enacted throughout the country by which such advantage can be taken. Those who favor the enactment of such laws may paint in fancy sketches the beneficent results which they claim will come from them; but the above case presents solid facts which show the legitimate and actual results of such laws put into effect. No such laws should ever be enacted or allowed to remain upon our statute books. The only safety lies in keeping our statute books free from such laws, and let religious questions be fought out solely upon religious grounds.

Actual
results of
Sunday laws.

Rights
should be
guaranteed.

It must be apparent to every intelligent and candid person that a man has the right and should have the privilege of using his time upon his own premises as he sees fit, and not be compelled to conform to the religious opinions and customs of the majority around him. Otherwise, religious freedom is simply freedom to believe and act as do the majority, which is no freedom. The historian Ridpath says, "Essential freedom is the right to *differ*, and that right must be sacredly respected."

Freedom is
right to differ.

Mr. King's
belief.

Mr. King's difference of practice in the keeping of a day is due to conscientious belief. He observes the seventh day because he believes that is the day enjoined by the Sabbath commandment. He believes that this was the day set apart at creation, observed by the chosen people of God, kept by Christ and the apostles, and never divinely changed. He certainly has a right to believe this, the same as others have to believe otherwise. His belief and practice in this matter should be no more occasion of disturbance to those who believe otherwise than are their belief and practice to him. But if he has rights of conscience which cannot be secured under this government, then religious freedom here is at an end. It remains to be seen whether religious liberty in this country is a reality, or only an empty boast.

"A poor
rule that
don't work
both ways."

SUPREME COURT OF TENNESSEE.

THE BRIEF SUBMITTED BY COLONEL T. E. RICHARDSON IN THE CASE OF
KING V. THE STATE.

Can there be any doubt that the act of 1741¹ was passed to favor and promote Christianity, and also the interests of the Church of England, then the religion and church of the state? Is it not equally plain that the act of 1803 was passed to promote and give preference to the Christian religion? that it was passed to prevent the profanation of a day sacred to certain persons claiming to be members of the Christian church, or of certain sects of Christians? This court knows historically, if not judicially, of the wonderful revivals and wide-spread religious excitement in the year 1800. They created a deep and lasting impression upon the people. They prevailed most extensively throughout the States of Kentucky and Tennessee. They were conducted principally by the Presbyterians and Methodists, and the power and influence then obtained by the latter, are felt and seen to the present time.

Object of
Sunday laws.Revivals
of 1800.

That the act of 1803 was the result of those revivals, and passed in obedience to the behests of those churches and to conform to their religious views, no one can doubt.² That the law was enacted to compel the observance of Sunday in conformity with their tenets, and to coerce the conscience of all persons who might differ with those sects, can be denied by no candid mind. By those acts exclusive jurisdiction was given to justices of the peace, to try, and punish, those who violated their provisions. For nearly a century no member of the bench or bar ever dreamed or held that the circuit courts of the State had jurisdiction over the offense, as created by those acts. For a half century or more after the passage of the act of 1803, it was regarded as the expression of earnest but fanatical zeal, and was allowed to fall into "innocuous desuetude." It is the fit instrument of petty persecution, and has been seldom used, even by the most earnest of zealots.

Act of 1803
a religious
law.Sunday
law a dead
letter.

To the credit of the Christian people of the State, it can be truly said, they have generally scorned to use such means of persecution or coercion.

¹ An act passed under Governor Gabriel Johnson, Esq., by and with the consent of King George II's council, and the General Assembly of the province of North Carolina, when the church was a part of the state. It required that "all and every person or persons whatsoever shall on the Lord's day, commonly called Sunday, carefully apply themselves to the duties of religion and piety." The fine for each offense was one dollar and twenty-five cents.

² This is admitted by Rev. W. F. Crafts, one of the leading advocates of Sunday laws in this country. In the "Christian Statesman" of July 3, 1890, he said: "During nearly all our American history, the churches have influenced the States to make and improve Sabbath laws."

Jealous
defenders
of liberty.

The framers of the Constitution have ever been jealous of any attempt to interfere with the rights of conscience, or the domination of any church or religious sect. In recent years, efforts have been made to revive and enforce the law of 1803, and by *judicial legislation*, the offense enacted by that act has been declared a nuisance at common law. . . .

Judicial
legislation.

Why is
Sunday work
a nuisance ?

Why is the act complained of declared to be immoral and unlawful ? Why are a succession of such acts declared to be a nuisance and indictable ? Because they have been done on Sunday ? Then it must be because it is repugnant to the religious views of the community. If it is a nuisance, why is it not such on Monday or Saturday, as well as on Sunday ? The answer is, Because the work is done on Sunday. If it is an offense because done on Sunday, then the law declaring such acts to be illegal and immoral is a religious law, enacted for the purpose of favoring some religion. If that be so, then the law is in violation of the Constitution. . . .

Sunday
law uncon-
stitutional.

Our political
system not
founded on
Christianity.

The government, State or federal, can in no sense be said to be founded or based upon Christianity.¹ No preference can be given to any religion. All religions are alike protected. The followers of Mahomet, the disciples of Confucius, the believers in Buddha, as well as the worshippers of the true and living God, are entitled to like protection, and are secured in the enjoyment of the same rights. In this State, in this nation, there is no such thing as "religious toleration."² Every man enjoys the same right of conscience, and is responsible to no earthly tribunal for his religious faith and worship. The assumption, therefore, that Christianity is a part of the law of the land, is inconsistent with the spirit of our institutions, as well as in violation of the reserved, accepted, and inalienable rights of the people. . . .

Equality of
all religions.

An incon-
sistent as-
sumption.

Praise-
worthy labor.

It goes without saying that plowing, the occupation of the farmer, is necessary for the comfort, and even the existence, of the citizens. Can it be said with propriety or reason, that this act so essential for the welfare of society, so commendable when done on Monday, when done on Sunday becomes offensive, immoral, and a common nuisance ? Is it not true that to hold that it becomes a nuisance when carried on on Sunday, is a perversion of the term "nuisance" ?³

A perva-
sion of law.

¹For a discussion of this question, see Hon. Allan G. Thurman's decision, *ante* page 154 ; opinion of the Supreme Court of Ohio, *ante* page 192 ; Jefferson's Essay on "Christianity and the Common Law," *ante* page 127 ; Tripolitan treaty, *ante* page 54.

²See Report of the United States Senate, *ante* page 98, and note.

³On this point, Colonel Richardson, on pages 2 and 3 of his brief, said :

"The acts complained of and proven, do not constitute a nuisance, as defined by this court in *State v. Lorry*, 7 Baxter, 95. A nuisance is something that injuriously affects the comfort, or welfare, or enjoyment of human existence, and must affect all alike who come within its influence. It must be something more than a mere spiritual discomfort. . . . In determining as to a nuisance, the true rule seems to be that the act or thing complained of affects all alike who come within its influence. It is not a nuisance to one of peculiar sentiments, feelings, or tastes, if it would not affect others or all tastes ; not to a sectarian, if it would not be so to one belonging to no church. It must be something about the effects of which all agree. See *Sparhawk v. Union Pass Railroad Co.*, Pennsylvania State, 51, P. F. Smith, volume 4, page 427.

Sunday
labor not
a nuisance.

The establishment of Sunday as a day of rest and worship, grew out of the union of church and state, was commanded by ecclesiastical law, and the enforcement of its observance is contrary to the spirit and purpose of our form of government. . . .

Sunday laws grew out of church and state.

It was the spirit of the Sunday laws that banished Baptists, whipped the Quakers, and hung and burned women as witches, in the pious New England States.¹

Such laws have found favor and a congenial home only when there has been a union of church and state. On such legislation is based the statements and utterances of Mr. Blackstone,² in his commentaries referred to, and relied on as authority by this court, in the cases herein cited. They are contrary to the letter and spirit of our Constitution and of free government. No human law has a right to interfere with a man's religious belief, his freedom of conscience, his right to worship his Creator when and how he will, so long as he does not trespass on the rights of others. . . .

Contrary to our Constitution.

Our written Constitutions and our laws were made and intended for the protection of minorities — for the protection of the weak against the strong. Majorities and the powerful can protect themselves. But it is insisted that the act of 1803 and the opinions in *Gunter v. the State* and *Parker v. the State*, do not require that he shall work on Saturday, the Sabbath. Admitted. But they do coerce his conscience. They do require him to keep and observe a day he does not believe to be holy or sacred — a day *he* knows his Creator does not require him to keep. . . . They do compel him to a religious observance repulsive to his conscience. They do give preference to a mode of worship which is contrary to his faith. It is conceded that in following his usual avoca-

Constitution for protection of minorities.

Compulsion in Sunday laws.

The proof shows that the work charged in the indictment was done by King in his own private field, in the country, remote from any town; that it was not in a public place; that no crowd or assemblage was there; that the people had no right or occasion to meet or assemble there; and that the persons who claimed to be disturbed were disturbed or excited only because of their religious views." See the testimony in the case, *ante* page 338, especially that of witnesses Oaks and Marshall, pages 345, 346.

Nature of Mr. King's work.

¹ The so-called witches were not the only persons who were hanged. Quakers were also thus disposed of. Brooks Adams gives a chronological summary of these hangings in his recent work, "The Emancipation of Massachusetts," and on page 139 says:

Hanging of Quakers.

"A last effort was made to rekindle the dying flame in 1675, by fining constables who failed in their duty to break up Quaker meetings, and offering one third of the penalty to the informer. . . . Marmaduke Stevenson, William Robinson, Mary Dyer, and William Leddra were hanged, several were mutilated or branded, two at least are known to have died from starvation and whipping, and it is probable that others were killed whose fate cannot be traced. The number tortured under the Vagabond Act is unknown, nor can any estimate be made of the misery inflicted upon children by the ruin and exile of parents."

Speaking of the spirit which has always characterized prosecutions of offenders against the cherished institutions or beliefs of the dominant sect, Mr. Adams says:

Spirit which characterizes religious prosecutions.

"Howsoever bitterly Catholic and Protestant divines have hated and persecuted each other, they have united like true brethren in their hatred and their persecution of heretics; for such was their inexorable destiny."

² See *ante* pages 137 *et seq.*

Limitation
of rights.

tions, he has no right to incommode or interfere with or disturb the religious worship of others.

"A poor
rule that
don't work
both ways."

It is insisted that this law is in conformity with the religious faith of the majority of the Christian people, and that working upon Sunday is repulsive to them, and repugnant to their ideas of propriety and morality. Granted. That is a matter between them and their God. Is it not equally as offensive and repulsive to the plaintiff in error, to see the constant, open, and habitual violation and desecration of a day he holds to be holy and sacred? Is he not entitled to the same consideration and protection as the majority, or those who keep and observe Sunday? are you not giving preference to a "mode of worship" when you hold that he shall rest and observe Sunday because it is the holy day of the majority, and that the day he holds in reverence can be violated with impunity? What is this but giving a preference to a religious establishment and mode of worship, and a denial of the natural and indefeasible right to worship Almighty God according to the dictates of conscience, whether it is done by legislative enactment or judicial construction?

Showing
religious
preference.

A perversion
of the term
"nuisance."

Well was it said by the able and distinguished late chief justice of this court, that "to hold that barbering on Sunday was a nuisance, is a perversion of the term 'nuisance.'" *A fortiori* can his ruling be applied to plowing on Sunday, by a quiet, orderly citizen, in his own field, in a secluded part of the country, and in the discharge of what he conscientiously believes to be his duty to his God and his family. . . .

Amount
it costs to
violate the
teachings of
the dominant
cult.

A fine of seventy-five dollars is imposed, to appease the demands for vengeance. Seventy-five dollars and costs are demanded of Mr. King, as due punishment for an act of which the law of the State for nearly one hundred years had declared the penalty to be ample when fixed at three dollars!¹

Hardship
caused by
Sunday laws.

¹As severe as these Sunday laws are found to operate on the laboring man, many of the petitions and arguments for Sunday legislation present the plea that the "poor, overworked laboring man" suffers where we do not have the Sunday law to protect his interests. But the absurdity of such pleas are manifest; for *laboring men are the very men who are made to suffer by these Sunday laws*, Messrs. King and Parker of Tennessee, and their brethren, for example. Sunday laws are intended to enforce regard for the day the majority consider as sacred,—not to protect the laboring man. "The 'American' Sabbath must be protected!" is their watchword; and they are resolved to protect Sunday—by law, too—whether the laboring man, or any other man, is benefited or oppressed. The laboring classes do not want all means of enjoyment and recreation prohibited on Sunday; they do not want libraries, museums, and art galleries closed, nor excursion trains, picnics, and driving stopped. Far from it. They want and need the benefits to be derived from these various means of physical rest and mental culture which they can obtain only on the first day of the week. They even raise their voices against these oppressive ecclesiastical laws. This fact is reluctantly admitted by Rev. W. F. Crafts in his book appealing for Sunday laws. He says:

Opposed
by laboring
men.

Resolution
of a labor
union.

"Blind to these great facts [the blessings of strict Sunday observance], a shoelasters' union in Brooklyn, at the publication of the new Penal Code of New York in 1882, adopted a paper which thus describes the Sabbath laws: 'We learn with regret that the churches are joining hands with tyranny and capital for the purpose of suppressing liberty and oppressing the laborer'—sentiments representative of many labor organizations, which show that holiday Sundays prevent those who follow them from

The verdict and judgment are a travesty on justice ; the fine imposed is altogether disproportioned to the act ; the verdict shows that it is the result of prejudice, of intolerance, of fanatical zeal ; it shows the beginning of a revival of religious persecution, that has so often cursed humanity. It is another exhibition of "man's inhumanity to man." It merits, and I doubt not will meet, the reprobation of this high tribunal, — the last refuge and asylum of the oppressed and persecuted citizen. The dangers and evils that must result from the making and enforcement of Sunday laws, are fully illustrated in this case ; this verdict shows the necessity of returning to constitutional methods, the protection of inalienable rights, the danger of judicial and religious legislation, the absolute necessity of keeping forever separate the powers and functions of church and state.¹

A travesty on justice.

"Man's inhumanity to man."

Necessity of forever separating church and state.

Christianity needs no state aid.

Christianity needs no legislation or judicial aid, beyond the protection of its adherents in their right to worship according to the dictates

learning the a-b-c of political science, and keep them in such ignorance of the true meaning of liberty that they mistake its champions for oppressors." "The Sabbath for Man," page 226.

Mr. Crafts also inadvertently admits that the laboring man will not suffer, but rather be the gainer, by a strict observance of Sunday, even where Sunday is not regarded. On pages 428, 429 of the same work, he says :

"Among other printed questions to which I have collected numerous answers, was this one: 'Do you know of any instance where a Christian's refusal to do Sunday work or Sunday trading has resulted in his financial ruin?' Of the two hundred answers from persons representing all trades and professions, *not one is affirmative*. A Western editor thinks that a Christian whose refusal to do Sunday work had resulted in his financial ruin would be as great a curiosity as 'the missing link.' There are instances in which men have lost places by refusing to do Sunday work, but they have usually found other places as good or better. With some there has been 'temporary self-sacrifice, but ultimate betterment.' . . . Even in India, where most of the business community is heathen, missionaries testify that loyalty to the Sabbath in the end brings no worldly loss. On the other hand, incidents have come to me by the score, of those who have gained, even in their worldly prosperity, by daring to do right in the matter of Sunday work."

No need of Sunday laws.

1 John Fiske, in speaking of the first decennium of our nation, in "The Critical Period of American History, 1783-1789," pages 76, 77, writes the following in reference to Sunday prosecutions a century ago :

"By the revolutionary legislation of the States some progress was also effected in the direction of a more complete religious freedom. . . . The tithing-man still arrested Sabbath-breakers, and shut them up in the town-cage in the market-place ; he stopped all unnecessary riding or driving on Sunday, and haled people off to the meeting-house whether they would or not. Such restraints upon liberty were still endured by people who had dared and suffered so much for liberty's sake. The men of Boston strove hard to secure the repeal of these barbarous laws, and the disestablishment of the Congregational Church ; but they were outvoted by the delegates from the rural towns."

Sunday laws a century ago.

Attempts to repeal them.

The following extract from the diary of John Adams, himself from Massachusetts, also shows how tenaciously the New-Englanders clung to their religious laws :

"I knew they [those endeavoring to unite the colonies] might as well turn the heavenly bodies out of their annual and diurnal courses, as the people of Massachusetts at the present day [1774] from their meeting-house and Sunday laws."

Tenacity of Sunday-law advocates.

It is these "barbarous laws" from which our early statesmen strove so earnestly to free themselves, that religio-political "reformers" are again endeavoring to fasten upon the American people.

Christ wants
no state aid.

of their own consciences. "My kingdom is not of this world," said the Saviour, and no human laws are required to secure the triumph of the Christian faith. The arm of secular government is not needed to enforce the commands of the world's Redeemer.¹ . . .

Nature
of work.

What is there in the acts proven tending to the corruption of the public morals, that was a disturbance of the community, that was offensive to the moral sense of the public, or a common nuisance? Only three men can be found who say there was anything offensive, and they only show that their sense of propriety was shocked. The other two witnesses for the State say they were not disturbed or annoyed, and saw nothing that was offensive.

Privacy
of work.

The work was done on King's own premises, where he had a right to be. It was not done in a public place; it was not done where the

¹Treating of the absurdity of government dealing with questions entirely foreign to its sphere, Mr. Minot J. Savage, in "The Forum" of September, 1890, truly says:

A much-
needed
reform.

"One of the most needed, as it is one of the most difficult, of all reforms is that which aims at having the state mind its own business. This includes two things—letting alone what is not its business, and really minding what is. In the light of legal history, one of the most curious things is the still-surviving popular faith in mere laws as means for preventing evil and accomplishing good. The statute books of even our young country are chiefly old lumber rooms. But, beyond this and more mischievous still, is the fact that the state is continually legislating concerning things that are beyond the limits not only of its rightful, but even of its possible, jurisdiction. Many of its attempts are as impracticable as would be a legal interference with the force of gravity. Should Congress enact laws concerning things in India, all the world would smile. But not our country only, nearly all countries, are still passing laws that imply a claim of jurisdiction over other worlds and other states of existence. They are passing laws that attempt to deal with inner conditions of consciousness—with metaphysical subtleties, over which philosophers and ecclesiastics are still wrangling. People want laws passed not only for the protection of life and property and for securing good conduct here and now, but they want laws the causes of which are supposed to come from other worlds, and for ends which issue only in other worlds. In brief, they are continually confounding the functions of the priest, the preacher, the philosopher, or the metaphysician with those of the legislator.

Absurd
legislation.

Erratic
notions.

Descent
of theocratic
ideas.

"Unreasonable as this may seem to be, the causes of it are easily traced. Originally, all governments were theocracies. The gods were but supernatural chiefs, clothed by superstitious imaginations with unknown and therefore awful powers. Whether their representative were priest or king, their supposed will superceded all other considerations. Even now, it is only here and there, and very slowly, that any of the nations are beginning to put considerations of human well-being in place of barbaric traditions of assumed authorities. Perhaps the larger part of all the government of the past has been dictated by considerations supposed to emanate from other worlds and issue in them. And precisely this part of all government has always been the most cruel and the most unjust.

Conserva-
tism of govern-
ments.

Present
ideas.

"We are slowly reaching a point at last where the most civilized peoples are beginning to see, with at least partial clearness, that the functions of the state should be limited to the practical matters of conduct in this life, and to their bearing on the liberties and rights of men as citizens. The philosophers may reason of ethical origins and principles, and of supersensual sanctions. The metaphysicians may speculate as to transcendental causes and results. Theologians may theorize as to what was in 'the mind of God,' of which actual facts are only a partial expression. For my present purpose, I question neither the right nor the wisdom of these things. But the point I wish to make is this, that, whether true or false, these things do not concern the state as such."

public had a right to be ! There was no crowd, or assemblage of people, when the work was done. The people had no right to assemble there. The work was not done in a place or in a manner calculated to disturb or offend the public, because the public had no right or occasion to assemble there. It is a new assumption and assertion to say that the work done by Mr. King, as described by the witnesses, was immoral, or prejudicial to public morals, or a common nuisance. The morals that were or could be prejudiced or corrupted by what the witnesses saw and have detailed, must be weak indeed. Such morals are scarce worth the protection of the courts, and will not do to come in contact with the world. It is worse than a "perversion" of the word "nuisance," to denounce and hold that the working of Mr. King was a common nuisance.

It could not be a nuisance.

To affirm the judgment can but result in evil, and only evil ; it will be to rekindle and cause to burn afresh, the fires of religious persecution ; for behind and pressing the prosecution, is the spirit of bigotry, intolerance, and religious persecution. It is religious persecution. It is the very spirit of the Inquisition. It is the spirit of religious persecution, in every land, in every age, wherever found. It is the spirit that instigated the "Massacre of St. Bartholomew." It is the spirit that inspired the "Sicilian Vespers." It is the spirit that revoked the Edict of Nantes, and lighted the fires of Smithfield. It is the spirit that moves and governs those who demand and clamor for the passage by Congress of the Blair Sunday-rest bill,¹ and the District of Columbia Sunday bill. . . .

Religious persecution.

Spirit permeating Sunday laws.

¹In reference to the re-introduction of the Blair Sunday bill, the "Independent" of Litchfield, Minnesota, makes the following truthful observations :

"Since the present session of Congress opened, Senator Blair has re-introduced his famous Sunday-rest bill. He has changed the title and made other modifications in the bill to disarm opposition. One of the most important is a sop thrown to the Seventh-day Adventists in a proviso exempting them from the operations of the bill. Notwithstanding these disguises and concessions, the spirit of the bill remains the same. The principle is wholly, radically, and fundamentally wrong, and it matters little how the act is doctored and tinkered to satisfy this or that element of opposition. We hope Congress will sit squarely down on it. It matters not what pleas are urged in favor of the bill—that it is in the 'interest of the laboring man to secure him a day of rest,' etc. There may be some truth in this, but the fact remains that the real object of the bill is coercion of those who differ from the prevailing religious observance of this nation." Quoted in the "Christian Statesman," Philadelphia, May 8, 1890.

Blair Sunday bill.

The Blair educational amendment, providing that the "unsectarian principles of Christianity" shall be taught in the public schools, is equally subversive of American principles. On the question of religious instruction in the public schools, Dr. Tiffany, a Methodist pastor of Minneapolis, Minnesota, in an address at a high school commencement, stated the following sound principles :

Blair educational amendment.

"Church and state must not be united. As Americans, we deny the right of any religious or other combination to have authority in civil matters. We recognize religion as a necessity, and the church as a form of it ; but we look with suspicion upon any interference it may attempt in government. . . . Home shall teach youth obedience, the churches religion, but the schools shall give knowledge. The state must not teach religion, for that would give it authority to decide what religion to teach. The state must educate the children to make them intelligent, not saints." "Post," Rochester, Minnesota, July 13, 1890.

American principles.

Sunday laws a stepping-stone to further religious legislation.

Effect of adhering to an unjust precedent.

Plea for Sabbatarians.

Importance of the case.

Other Sabbatarians prosecuted.

Evil consequences.

The enforcement of Sunday laws is the initial step by which they [religio-political organizations] hope to reach their ends, and crush out all freedom of thought and individual opinion. These organizations or societies, not content with thrusting themselves upon legislative bodies and seeking to gain political power, are attempting to invade the very Temple of Justice. They hang as a portentous cloud upon the political horizon, ominous of evil. By their acts they say that the "saints shall inherit the earth, and we are the saints!"

If the ruling in *Parker v. the State*¹ shall be adhered to, personal government, paternalism, will be the established law, while spiteful persecution and petty prosecutions will fill the courts to overflowing. Every man will be forced to adjust his conscience and his faith to fit and fill the bedstead of some religious Procrustes; this boasted "land of the free" will be such no longer.

For protection from persecution and threatened danger, the plaintiff in error invokes the aid and interposition of this court; he craves the boon of living and worshiping as his conscience dictates. In their present condition, well may he and his brethren exclaim in the words of St. Paul, "We are troubled on every side, yet not distressed; we are perplexed, but not in despair; persecuted, but not forsaken; cast down, but not destroyed."

The determination of the case is important, not only to the appellant, but to the people of the whole State. With confidence, with perfect trust, the cause of my client, carrying with it the cause of religious liberty and of personal freedom, is submitted to the calm and impartial judgment of this court of last resort.

¹*Parker v. the State* is another case of prosecution of Sabbatarians which occurred in 1886. Mr. W. H. Parker lives at Springville, Tennessee. About a score of prosecutions of this kind have occurred among the members of the Seventh-day Adventist church at this place alone. His case was taken to the Supreme Court of the State, and notwithstanding the fact that the statute against Sunday labor in Tennessee does not make such labor an indictable offense, but subjects the offender to a fine of only three dollars, recoverable before the justice of the peace, it was there decided that "a succession of such acts becomes a nuisance, and is indictable." The decision of the lower court was confirmed, and his fine and costs, amounting to sixty-nine dollars and eighty-one cents, imposed. These he refused to pay, believing that to do so would be a compromise of his principles by acknowledging the justice of the law and of his conviction under it. Consequently he was sentenced to serve out the amount in jail, which would require a period of two hundred eighty days. Taken from his wife, who at the time was in a delicate condition, and from a child who was under the doctor's care, he, with two other men, Mr. James Stem and Mr. William Dortch, was committed to jail, where he and Mr. Stem contracted malarial fever. On account of his sickness he was released after being in jail fifty-nine days, upon giving bonds to return when he got well. In two months he returned, and worked out the balance of his sentence, serving in all an imprisonment of seventy-four days. From the effects of the malaria he never fully recovered, and has since lost his health entirely, being unable longer to support his family, in consequence of which they have been brought into destitute circumstances.

INDEX

INDEX.

References in this index are to pages, the superior figures being used when notes are referred to. The superior cipher is used to designate that part of a note running over from the preceding page.

- Adams, Brooks, quoted, 355¹.
 Adams, John, letter to Jefferson on civil laws against blasphemy, 80, 81, 255¹; Massachusetts Sunday laws, 357¹.
 Adventists, Seventh-day, 31², 211, 325, 330-333, 337, 348, 349, 359¹, 360¹.
 Aid of government not necessary to religion, 33, 57, 76, 77, 79, 159¹, 193-195, 201, 357, 358.
 Alabama, constitutional provisions concerning religion, 237, 238; Sunday law, 272, 273.
 Alarm, the least step towards religious legislation should cause, 30, 92, 95, 105, 109, 172, 173.
 Alfred's laws, their falsification, 134-138.
 Allen, Justice, upholds Sunday laws, 146¹.
 Amendments to Federal Constitution, 50-53; - quoted, 51⁰, 74¹, 105, 214, 220.
 "American Archives," quoted, 17.
 American history, importance, 39⁰.
 American institutions, 5, 6, 9, 10⁰, 54, 56, 73, 75, 93, 113², 309¹.
 American political system, establishes absolute equality, 73, 74, 79; recognizes in Sabbatarians the same rights that exist in Sunday-keepers, 74¹; deviations from, 56, 57, 75-77, 95, 98, 354; lessons it is teaching to the world, 77, 352; see Jew, Mahometan, Infidel, Hindoo, etc.
 "American Sabbath Union," 84⁰, 88⁰, 102¹, 222, 223.
 "American State Papers," quoted, 54, 55, 59-67, 89-126.
 Anglican liberty, 9.
 "Annals of Congress," quoted, 58, 59, 67, 68.
 "Arguments on the Breckinridge Sunday Bill," quoted, 32⁰.
 Arizona, has no Sunday law, 273.
 Arkansas Bar Association, report on Sunday laws, 330.
 Arkansas, constitutional provisions concerning religion, 238; Sunday law, 273-275; Supreme Court upholds Sunday laws, 146-150.
 Army of the Tennessee, address of General Grant to, 202-204; quoted, 77¹, 92¹.
 Arrogant pretension, that rulers are competent to prescribe religion, 32.
 Atheist, has equal rights with the Christian, 9; see Infidel.
 Authority of precedents, 131, 132, 170.
 "Autobiography," of Thomas Jefferson, quoted, 24¹, 41⁰, 55⁰.
 Backus, Rev. Dr. Isaac, 45; an earnest advocate of religious liberty, 46⁰.
 Baldwin, Justice, quoted, 191.
 Baptists, 84⁰, 126¹, 326-329, 351; Seventh-day, 31², 156, 211.
 Bancroft, George, quoted, 71, 110¹, 124¹, 262¹.
 Barker, Justice, 336, 347.
 "Beginnings of New England," quoted, 93¹, 95¹, 117⁰, 122¹, 123¹.
 Best, Chief Justice, quoted, 153¹.
 Bible, cannot be constitutionally read in our public schools, 42⁰, 192-201, 226-234; prohibited in the public schools of Cincinnati, 192¹; a sectarian book, 226-234; quoted, 88⁰, 196, 284³, 337¹, 358; cited, 349, 350.
 Billings v. Hall, 177.
 Bishop, on "Marriage and Divorce," quoted, 240⁰.
 Blackstone, asserted equality of mankind, 181; on common law, 132¹; states that human laws are void when contrary to natural law, 69²; eulogized by Herbert Spencer, 69²; states the English doctrine of Christianity being a part of the common law, 131, 137¹-142⁰, 153⁰.
 Blaine, Hon. James G., amendment proposed to national Constitution, 49², 92¹, 205⁰.
 Blair, Senator H. W., presenting petitions for Sunday law, 84⁰; Sunday bill, 88⁰, 98¹, 359¹; constitutional amendment, 88⁰, 98¹, 205⁰, 253¹, 359¹; letter to New York "Mail and Express," 206, 207.
 Blasphemy, 7², 80, 81.
 Bloom v. Richards, 151-156; cited, 42⁰, 155¹, 200.
 Board of Education of the City of Cincinnati v. Minor, 192-201, 41⁰, 42⁰.
 Bond, Attorney-General, 338, 339, 341, 342, 347, 450; summary of speech, 348, 349.
 Bower's "History of the Popes," quoted, 94⁰.
 Boyle, Chief Justice, 240⁰.
 Bracton, cited, 133.
 Brief of Attorney Mc Kee on Sunday legislation, 214-225.

Brief of Colonel Richardson on the Tennessee

Sunday law, 353-360.

Bronson *v.* Kenzie, quoted, 190.

Brown, Rev. Obadiah B., 124¹.

Bryan *v.* Berry, quoted, 170.

Burke, Edmund, on American liberty, 92.

Burnett, Justice, quoted, 179-191, 162¹, 165⁰, 177.

Caldwell, Justice, dissent, 144, 145; cited, 155¹.

California, constitutional provisions concerning religion, 239; has no Sunday law, 275; Supreme Court declared Sunday laws unconstitutional, 166-191; quoted, 162¹, 165⁰, 177.

Callicott, prosecution of, for violating the Tennessee Sunday law, 336, 337.

Capital punishment, 121¹; for violating Sunday laws, 123⁰, 281¹.

Catholics, have equal rights with the Protestants, 9, 68¹; should assert their rights, 76; intolerance toward, by "reform" agitators, 206, 207.

Catlin, Mrs., 32.

"Century Dictionary," quoted, 151².

Chamberlain of London *v.* Evans, 131, 153⁰.

Chambers, 83, 87.

Chandler, 83.

Chaplains in Congress, 75, 251¹.

Charles II, Sunday law, 270, 271.

Chitty's Blackstone, cited 69.

"Christian Herald," quoted, 351.

Christianity, see Christian religion.

"Christian Nation," quoted, 94⁰.

Christian religion, our government not, in any sense, founded on, 8, 54, 354; efforts to favor, said by Madison to be dishonorable and dangerous, 27², 28⁰; bill establishing a provision for teachers of the, condemned by Madison, 27-38; needs no state aid, 33, 76, 77; cannot be constitutionally taught in our public schools, 420; such teaching unchristian, 196; not a part of our law, 42⁰, 50¹, 54, 127-141⁰, 151-156, 354; a part of the English common law, as given by Blackstone, 137¹-142⁰.

"Christian Statesman," quoted, 87¹, 94⁰, 233⁰, 353².

Church and state, separation of, 6⁰, 10⁰, 56², 76, 78, 234, 278¹; position of national government on, 8; prejudice in its favor, 76; conspiracy between, 127¹, 153⁰.

Cincinnati Board of Education *v.* Minor, the Bible in the public schools, 192-201; quoted, 41⁰.

City of Canton *v.* Nist, 156⁰.

Civil Sabbath theory, 61¹, 87¹, 102¹, 173-176.

Clarke, Adam, persecution of, 350, 351.

Clarke, Thomas, quoted, 113¹.

Clergy, 46, 46⁰, 102¹; in Virginia, 27², 28⁰; in New England, 56².

Coke, quoted, 153¹.

Colcord, W. A., summary of the King case, 334-352.

Cole, Robert, testimony, 338-341.

Colorado, constitutional provision concerning religion, 241; Sunday law, 276.

Common law, 151, 151¹.

Compact with the United States, of New Mexico, 266; of North Dakota, 257; of Washington, 264.

Compulsory power illegitimate, 184.

Congress, deviated from American principles in appointing chaplains, 75; votes to present a sword to Colonel Johnson, 89²; cannot legislate on the Sunday question, 214-225; its sphere, 104, 105; has never legislated upon the question of Sunday mails, 96; passage of a Sunday law by, would be a religious decision, 106, 117; petition, against Sunday legislation, 127, 128.

"Congressional Record," quoted, 84⁰, 85⁰.

Connecticut, constitutional provisions concerning religion, 241, 242; Sunday law, 277, 278.

Constantine, 46, 112¹, 267-270; Sunday law, 269.

Constitution of the United States, 43; comments on, 44-46; liberty intended for Jews and pagans, 45; proposed amendments, 47-49; amendments, 50-53; quoted, 51⁰, 54¹, 74¹, 105, 214, 220; prohibits religious proclamations, 56, 57, 75; should be strictly adhered to, 56, 57, 75-77, 93-95, 98, 100; makes provision against Sunday legislation, 214; Sunday transportation of mail coeval with, 65.

Contract, social, see Social compact.

Contracts, Sunday, see Sunday contracts.

Cook, Joseph, quoted, 102¹.

Cooley, Judge Thomas M., cited, 7²; quoted, 99⁰, 162¹.

Cotton, John, 123¹.

Crafts, Rev. W. F., letter from Cardinal Gibbons, 84⁰; before the House committee, 86⁰; quoted, 32⁰, 102¹, 164⁰, 223, 353², 356¹.

"Critical Period of American History," quoted, 357¹.

Crockett, Senator, plea for Sabbatarians, 208-213.

Daggett, Hon. David, report, 65.

Dalrymple *v.* Dalrymple, quoted, 240⁰.

Dangerous fallacy, to interfere with propagation of principles on account of their ill tendency, 25.

Dangers to be guarded against, 30, 39⁰, 76, 92, 95, 95¹, 105, 109, 357.

Dead-letter laws, danger from un repealed, 39⁰.

"Debates on the Federal Constitution," quoted, 44-49.

Declaration of Independence, 21; quoted, 80, 181, 21, 222; drafted by Jefferson, 22¹.

Declaration of rights; see the respective States.

"Decline and Fall of the Roman Empire," quoted, 112¹, 121¹, 255¹.

De La Motta, Dr., letter from Madison, 73, 74.

Delaware, constitutional provisions concerning religion, 242, 243; Sunday law, 278.

- Democratic party, resolution on church and state, 49², 205⁰.
- Despotic power, 25, 32, 34, 37, 46, 95, 100, 106, 122, 162¹, 209, 234, 328⁰.
- Deviations from American principles, 75-77, 56, 57, 95, 98, 354.
- Discussion on Sunday mails, in House of Representatives, 67, 68; in Senate, 82-88.
- "Disturbance of others," an unreasonable provision in a Sunday law, 326²-328⁰, 339, 339¹.
- Dobbins, W. W., testimony, 341-343.
- Drury v. Defontaine, 153¹.
- Dumaresq v. Fishly, quoted, 240⁰.
- Dyer, Mary, hanged, 355¹.
- Edicts of Constantine, 269.
- Edwards, Rev. Jonathan, quoted, 233⁰.
- "Emancipation of Massachusetts," quoted, 355¹.
- Equality of all religions, 9, 28⁰, 73, 74, 76, 77, 78, 79, 93, 166, 182, 183.
- Equality of mankind, 8⁰, 9, 18, 21, 203, philosophical argument by Herbert Spencer, 181; in Virginia, 28⁰.
- Equality, violation of, by religious legislation, 30, 74¹, 183, 184.
- Eusebius's "Life of Constantine," quoted, 112¹.
- Everett, Edward, letter from Madison, 78, 79, 200, 201.
- Exemption clauses, a violation of equality, 31, 216, 593¹, 312¹.
- Exemption of Quakers and Mennonites, 31; of Sabbatarians, 312; Sunday advocates say Sabbatarians are exempted too much, 32⁰; of Sabbatarians expected to stop their opposition to religious legislation, 32⁰.
- Ex Parte Newman, quoted, 166-191, 162¹, 165⁰.
- Fairchild, Dr., open letter on persecutions under the Arkansas Sunday law, 333.
- Fanaticism, 332, 353.
- Farrow, 67.
- Federalist, said by Jefferson to be the best book on government, 22¹.
- Filmer, Sir Robert, quoted, 181.
- Finch, quoted, 129, 152⁰; cited, 134.
- Findley, 58.
- First amendment, 50, 51; quoted, 74¹, 105, 214.
- Fiske, John, quoted, 93¹, 95¹, 117⁰, 122¹, 123¹, 357¹.
- Fitzhugh, Justice, open letter on the operation of Sunday laws, 333.
- Flippin, Judge, tries Sabbatarians for violation of Sunday law, 337.
- Florida, constitutional provisions concerning religion, 243; Sunday law, 280.
- Forgery, the means by which Christianity came to be recognized as a part of the common law, 127¹.
- Fortescue, cited, 132¹; quoted, 134.
- Foster and Elam v. Neilson, quoted, 54¹.
- Foundation of Sunday-rest movements, 61, 61¹, 102¹, 149, 155¹-157⁰, 176.
- Fourteenth amendment, 53; quoted, 51⁰, 220.
- Free speech, right of, 51, 51¹.
- Gault, Rev. M. A., quoted, 94⁰.
- Gay's "James Madison," quoted, 99⁰.
- Georgia, constitutional provisions concerning religion, 243; Sunday law, 280-284.
- Gervinus, Professor, on Roger Williams, 51.
- Gibbon, establishment of Christianity, 112¹, 255¹; capital punishment, 121¹.
- Gibbons, James Cardinal, letter to Crafts, 80⁰; to Lindsey, 85⁰.
- Gilmer, Francis W., letter from Jefferson, 221, 69, 70.
- Government, a compact, 221, 70¹, 142, 143; derives its just power from people, 19, 22; should be limited to its sphere, 29, 30; no right to interfere with religion, 17; aid of, not necessary to religion, 33, 57, 77, 79, 159¹, 193-195, 201, 357, 358; object, 6, 69-71⁰, 90.
- Graham, Rev. E. B., quoted, 233⁰.
- Granger, Gideon, report, 59, 60.
- Grant, General, address, 202-204; quoted, 77, 92¹; message to Congress, quoted, 204².
- Gray, Rev. W. D., quoted, 222.
- Greenleaf, states marriage to be a civil contract, 240⁰.
- Hale, Sir Matthew, quoted, 130, 132.
- Harrison, General, 89².
- Hearing before the House Committee on District of Columbia, 312.
- Hindoo, has equal rights with the Christian, 241, 41⁰, 354.
- Henry, Patrick, 20⁰; on liberty, 44, 45; on the persecution of Baptists in Virginia, 326-329.
- "History of the Nineteenth Century," quoted, 51.
- Hoadley, Hon. George, 42⁰, 192¹.
- Hobart, Lord Chief Justice, states that any act against natural justice is void of itself, 69².
- Hobbs, Millard F., Master Workman of Knights of Labor, 85⁰, 86⁰, 164⁰.
- House of Representatives, report, in 1812, 62; in 1812, 63, 64; in 1815, 64; in 1830, 101-124; report of 1830 quoted, 91.
- Hume's Political Essays, recommended by Jefferson, 23⁰.
- Idaho, constitutional provisions concerning religion, 243; Sunday law, 284.
- Illinois, constitutional provisions concerning religion, 244; Sunday law, 284, 285.
- "Independent," Litchfield, Minnesota, quoted, 359¹.
- "Independent," New York, quoted, 226-229.
- Independents in Westminster Assembly, declaration of, 20⁰.

- Indiana, constitutional provisions concerning religion, 244; Sunday law, 285, 286.
- Infidel, has equal rights with the Christian, 9, 24¹, 28⁰, 31, 41⁰, 199.
- Innate sense of rights, 52¹, 114, 114¹, 116, 116⁰.
- Inquisition, 34, 348.
- Intolerance of Sunday-law advocates, 232¹, 232².
- Iowa, constitutional provisions concerning religion, 245; Sunday law, 286.
- Jackson *v.* Lamphine, quoted, 191.
- Jefferson, Thomas, influence, 5; views on natural rights, 22¹; favorite political works, 22¹, 23⁰; pride in Virginia act for establishing religious freedom, 23¹; difficulty in establishing religious freedom, 24⁰; breadth of views, 24¹; letter from Madison, 27²; foresight, 39⁰; equality of all, 41⁰; sphere of government, 69, 70; for quotations in full, see "Works of Thomas Jefferson."
- Jewish government a theocracy, 92.
- Jew has equal rights with the Christian, 9, 24¹, 28⁰, 41⁰, 45, 55⁰, 42⁰, 68¹, 73, 74, 91, 96, 110, 122, 199; discriminated against by Sunday laws, 162¹.
- Johnson, Chief Justice (of Arkansas), upholds Sunday laws, 146-150.
- Johnson, Col. Richard M., 62³, 82, 83, 87, 88, 124¹, 126; biography, 89²; reports, 89-100, 101-126; popularity, 62³, 89², 124¹; one of the fathers of the Democratic party, 209; quoted, 5, 9¹, 55⁰, 154¹, 159¹, 172, 173, 209, 210, 224.
- "Johnson's Universal Cyclopedia," quoted, 239¹.
- Jones, A. T., editor of "American Sentinel," quoted, 31².
- Jones, Rev. Dan T., letters from Judge Williams, 330, 331; Judge Rose, 331, 332; E. Stinson, 332; Dr. Fairchild and E. E. Woodcock, 333; Justice Fitzhugh, 333.
- Judicial legislation, 127¹, 354.
- Kansas, constitutional provisions concerning religion, 245; Sunday law, 287.
- Kentucky, constitutional provision concerning religion, 245, 246; Sunday law, 287, 288.
- King case, see the State *v.* King, and King, R. M.
- King, Representative, 67.
- King, R. M., prosecuted for violating the Sunday law of Tennessee, 334-360; twice tried and convicted for the same act, 334, 347.
- King, Rufus, 155¹.
- King *v.* Woolston, 130.
- Knights of Labor, 85⁰; some radically opposed to Sunday legislation, 86⁰.
- Knowles, Rev. J. H., editor of the "Pearl of Days," quoted, 88⁰.
- Laboring man and Sunday laws, 85, 86, 163¹, 164⁰, 356¹.
- La Fayette, General, letter from Madison, 28⁰, 38¹.
- Landman's "Dictionary of Congress," quoted, 89².
- Law of nature, its absolute supremacy over human laws, 69².
- Leddra, William, hanged, 355¹.
- Legislative bodies, no authority over religion, 29; power derivative and limited, 29, 70¹, 72, 177; not supreme, 19, 37, 48, 177; their office, 69.
- Lessee of Lindsley *v.* Coates, quoted, 151¹.
- Lewis, Dr. A. H., quoted, 102¹, 156⁰.
- Liberty, necessity of guarding, 30; importance, 44.
- Liberty of conscience in Rhode Island, 5¹.
- Liberty of opinion, should be absolute, 26.
- Lieber, Francis, on American liberty, 9²; majorities and liberty, 108⁰.
- Lincoln, letter from Jefferson, 56².
- Littleton, quoted, 130.
- Livingston, Edward, letter from Madison, 75-77, 201.
- Livingston, Governor, an ideal prayer of, 78.
- Locke, John, quoted, 18¹; his work recommended by Jefferson, 22¹, 23⁰.
- Louisiana, constitutional provisions concerning religion, 246; Sunday law, 288, 289.
- Lyon, Justice, quoted, 226-229.
- Macaulay, Lord, quoted, 90¹, 95², 116¹, 160⁰.
- Madison, James, 5, 89² 98², 200; interest in religious liberty, 20¹; letter to Jefferson, 27²; views on toleration, 20¹, 98²; memorial and remonstrance, 27; quoted, 50¹, 55⁰, 70⁰, 172¹, 178¹; proposed amendment to national Constitution, 50¹; letter to La Fayette, 28⁰, 38¹; letter to Monroe, 28⁰; letter to Dr. De La Motta, 73, 74; letter to Edward Livingston, 75-77; letter to Edward Everett, 78, 79; for quotations in full, see "Writings of James Madison."
- Magistrates the servants of the people and amenable to them, 19, 71⁰, 73⁰.
- Mahometan, has equal rights with the Christian, 9, 24¹, 28⁰, 41⁰, 42⁰, 54, 55⁰, 68¹, 354.
- Mail, to be delivered on all days of the week, 58, 60, 66, 82, 105.
- Maine, constitutional provisions concerning religion, 246, 247; Sunday law, 289, 290.
- Majorities, 29, 96, 107, 143, 198, 209, 355; and Christianity, 193.
- Mansfield, quoted, 131, 153⁰, 153⁰.
- Marriage a civil contract, 239¹, 240⁰.
- Marshall, Chief Justice, quoted, 54¹.
- Marshall, J. T., testimony, 346, 347.
- Marvin, Rev. Mr., testimony as to belief of Seventh-day Adventists, 337.
- Maryland, constitutional provisions concerning religion, 247; Sunday law, 290, 291.
- Mason, Col. George, 20¹, 38¹.
- Massachusetts, constitutional provisions concerning religion, 247-249; Sunday laws, 292-294.
- Matthews, Hon. Stanley, 42⁰, 192¹.

- Mc Allister, Dr., editor "Christian Statesman," quoted, 94^o, 95².
- Mc Gatrack *v.* Wason, cited, 42^o, 155¹, 200.
- Mc Kee, W. H., brief on Sunday legislation, 214-225.
- Meigs, Return J., report, 65.
- Meister *v.* Moore, quoted, 240^o.
- Memorial and petition against Sunday mails, 61.
- Memorial and remonstrance of James Madison, 27; its origin, 38¹; quoted, 50¹, 55^o, 70^o, 172¹, 178¹.
- Memorial of the General Assembly of Indiana, 125, 126.
- Methodists, 84^o, 86^o, 126¹, 353, 359¹.
- Michigan, constitutional provisions concerning religion, 249, 250; Sunday law, 294-296.
- Millar, Rev. Mr., letter from Jefferson declaring religious proclamations to be unconstitutional, 56, 57.
- Mill, John Stuart, asserts that Sunday legislation is an infringement of liberty, 103¹, 160^o, 164^o; tendency of mankind to force *their* opinions upon others, 104¹, 291¹; right of individual opinion, 106¹; fundamental principle of government, 336²; authority of society, 339¹.
- Minnesota, constitutional provisions concerning religion, 250; Sunday law, 296, 297.
- Minorities, 29, 96, 107, 198, 209.
- Minor *v.* Cincinnati Board of Education, 42^o, 155¹.
- Mississippi, constitutional provisions concerning religion, 250; Sunday law, 297, 298.
- Missouri, constitutional provisions concerning religion, 251; Sunday law, 298, 299; Supreme Court upholds Sunday laws, 157-165.
- Monroe, James, letter from Madison, 28^o.
- Montana, constitutional provision concerning religion, 252; Sunday law, 299.
- Montesquieu's "Spirit of Laws," recommended by Jefferson, 22¹; contains both political truths and heresies, 22¹.
- Mormons, 348, 349; Sunday observers, 349.
- Narragansett Historical Society, publications of, quoted, 5¹.
- National Reformers, 94^o, 101¹, 222.
- Natural law, its absolute supremacy over human laws, 69².
- Natural rights, 9, 37, 39^o; not surrendered on entering society, 22¹, 69, 70; infringement, 26; inalienability, 69².
- Nebraska, constitutional provisions concerning religion, 252, 253; Sunday law, 299, 300.
- Nevada, constitutional provisions concerning religion, 253; Sunday law, 300, 301.
- New England clergy, 46^o, 56².
- New Hampshire, constitutional provisions concerning religion, 253, 254; Sunday law, 301.
- New Jersey, constitutional provisions concerning religion, 254; Sunday law, 302-307.
- New Mexico, constitutional provisions concerning religion, 265, 266; compact with the United States, 266; Sunday law, 307, 308.
- New York, constitutional provisions concerning religion, 244, 255; Sunday law, 308, 309; Supreme Court, cited, 146¹.
- Nicholas, Col. George, 38.
- Ninth amendment, 52.
- North Carolina, constitutional provision concerning religion, 255; Sunday law, 309, 310.
- North Dakota, constitutional provisions concerning religion, 256, 257; Sunday law, 310, 311.
- Northwest territory, its cession to the United States, 40¹.
- Norvell, John, letter from Jefferson, 23^o.
- "Notes on Virginia," by Thomas Jefferson, quoted, 39^o, 109¹.
- Nuisance, 354, 354¹, 327^o, 356, 359.
- Nullifidian, 286¹, 293¹; see Infidel.
- Oaks, William, testimony, 345, 346.
- Ohio, constitutional provisions concerning religion, 257, 258; Sunday law, 311, 312; Supreme Court, quoted, 41^o, 42^o, 144, 145, 153¹, 157-156, 192-201.
- "On Civil Liberty and Self-government," quoted, 9², 108^o.
- "On Liberty," by John Stuart Mill, quoted, 103¹, 104¹, 106¹, 160^o, 164^o, 256^o.
- Operation of Sunday laws, 325-360.
- Oregon, constitutional provisions concerning religion, 258; Sunday law, 312.
- Orton, Justice H. S., on the Bible in the public schools, 229-234.
- Owings *v.* Norwood's Lessee, cited, 54¹.
- Parker, W. H., prosecution of, for violation of Sunday law, 360¹.
- Parliament, law of, against natural justice void, 69²; doctrine of its omnipotence alluded to, 156, 182.
- Parton's "Life of Thomas Jefferson," quoted, 23¹, 326-329.
- Paternalism, 360.
- Pelagius, Pope, quoted, 94^o.
- Pennsylvania, constitutional provisions concerning religion, 259; Sunday law, 313, 314.
- Persecution, in Old World, 35, 93, 95, 111, 113; by Catholics and Protestants against each other, 43², 355¹; theories of Catholics and Protestants identical, 94^o, 355¹.
- Petitions, in 1784, for religious legislation, 27²; in reference to Sunday mails, 58, 59; how obtained in 1888-1890, 83¹-86^o.
- Plan of accommodation with Great Britain, 17.
- Political system, see American political system.
- Poore, Ben: Perley, quoted, 124¹.
- Porter, 59.
- Precedents, authority of, 170.
- Presbyterians, 20^o, 27², 28^o, 84^o, 86^o, 351, 353.

- Presbytery of Hanover, declaration on the sphere of government, 21^o.
- Presumption of legislatures, 37, 71^o.
- Priestly's essay on the first principles of government, recommended by Jefferson, 23^o.
- Prisot, quoted, 128, 130, 152^o.
- Proctor, Major General, 90^o.
- Prosecution of Sabbatarians, 101, 1631, 208-213, 2121, 325-360, 3601; spirit characterizing, 330-333, 335, 3361, 359; testimony, 337-347.
- Protestant doctrine of private judgment, 901.
- Protestantism, persecutions by, 432.
- Public opinion, 76.
- Quakers, 31, 351, 355, 3551.
- Randolph, letter from Jefferson, 221.
- Reformation, English, influence upon Sunday legislation, 267-271.
- "Register of Debates in Congress," quoted, 82-88.
- Religion, Christian; see Christian religion.
- "Religion," meaning of the term, 402.
- Religion, must not be forced, 19, 28, 29; government no right to decide between true and false, 21^o, 55^o, 93; wholly exempt from cognizance of government, 17, 21^o, 29, 34, 44, 75, 78; must not be established, 30; purest when it receives no state aid, 33, 76, 77, 771, 79; state teaching of, a revocation of liberty, 35; cannot be constitutionally taught in our public schools, 27-38, 42^o, 78, 79.
- Religious despotisms, how they originate, 95.
- Religious laws unconstitutional, 151-156.
- Religious proclamations unconstitutional, 56, 57, 75-77, 1051.
- Religious sects, on an equality, 34, 47-49, 73, 76, 77, 78, 79, 93, 166, 182, 183, 354.
- Religious tests, 72; corrupts religion, 25; forbidden by national Constitution, 43.
- Remonstrance, against religious legislation, 27-38; against Sunday mails, 61; against Sunday legislation, 125, 126.
- Republican national convention on the use of public money for sectarian schools, 205^o.
- Revolution, spirit of, 109, 3291.
- Reynolds v. United States, cited, 501.
- Rhea, Hon. John, Senate report of, 62-64.
- Rhode Island, founding of, 51; provisions concerning religion, 259; Sunday law, 314, 315.
- Richardson, Col., 338-349; Supreme Court brief, 353-360; summary of speech, 347, 348.
- Ridpath, quoted, 352.
- Rights, cannot be taken away or surrendered, 19, 221, 37, 99; necessity of guarding, 39^o, 92; self-evidence of, 521-54^o; recognized by national government in ninth amendment, 52; to be protected by federal government, 53; their immutability, 692; equality, 9, 18, 21, 30, 53^o, 74; deprivation of, by Sunday laws, 1891.
- Rive's "Life of Madison," cited, 99^o.
- Robinson, William, hanged, 3551.
- Rose, Judge, says Sunday laws are oppressive on Sabbatarians, 331, 332.
- Rowan, 88.
- Ruffin, Chief Justice, on the reason for Sunday prosecutions, 611, 165^o, 348^o.
- Sabbatarians, exemption, 312; exempted too much, 320; rights, 741; discriminated against in Sunday laws, 1621, 172; helief, 211, 337; character, 211, 213, 325, 330, 332, 333; prosecution of, see Prosecution of Sabbatarians.
- "Sabbath for Man," quoted, 32^o, 1021, 164^o, 3561.
- Savage, Rev. M. J., on sphere of government, 3581.
- Schulze, 86^o.
- Schaff, Dr. Philip, quoted, 50^o, 54^o, 99^o, 1132.
- Scoles, Rev. J. W., prosecution of, for Sunday work, 3251.
- Scott, Judge (of Missouri), quoted, upholding Sunday laws, 157-165.
- Scott, Judge (of Ohio), cited, 1551; quoted, 156^o.
- Scriptures, see Bible.
- Sects, see Religious sects.
- Secular principles of government, 76, 771, 1241.
- Sellers v. Dugan, quoted, 144, 145.
- Senate, United States, see United States Senate.
- Separation of church and state, see Church and state, separation of.
- Sepect v. Commonwealth, quoted, 171.
- Shepard, Col. Elliott F., quoted, 88^o, 222.
- Shockey, John, prosecution of, for Sunday work, 335.
- Shoe lasters' union, against Sunday laws, 164^o.
- Shover v. State (Arkansas), 146-150, 348^o.
- Slaves, people so called by Madison who submit to religious laws, 30.
- Smith's "Wealth of Nations," considered by Jefferson as the best work on political economy extant, 221.
- Smith v. Sparrow, 1531.
- Social compact, 221, 701, 142, 143.
- "Social Statics," quoted, 181, 212, 511, 521, 692, 71^o, 1141, 1202.
- South Carolina, constitutional provisions concerning religion, 260; Sunday law, 315-317, 72, 1201.
- South Dakota, constitutional provisions concerning religion, 260; Sunday law, 317.
- Spencer, Herbert, philosophical argument on equality of rights, 181; statement of individual rights, 8^o; rights of life and personal liberty, 212; right of free speech, 511; self-evidence of rights, 521; invalidity of human laws when contrary to the law of nature, 692; rights not surrendered on entering the social state, 71^o-73^o; the powers of majorities, 1071; innate sense of rights, 1141; on state-paid religious teachers, 1202.

- Sphere of civil government, 22¹, 69, 70, 358¹.
Stanford, 68.
Stanhope, Lord, quoted, 99⁰.
State aid not necessary to religion, 33, 77, 79, 159¹, 193-195, 201, 357, 358.
State Constitutions, 237-266.
State *v.* Ambs (Missouri), 157-165; cited, 146¹.
State *v.* King, prosecution for Sunday work, 334-360.
State *v.* Williams (North Carolina), quoted, 61¹, 165⁰, 348⁰.
Stevenson, Marmaduke, hanged, 355.
Stevenson, Dr., editor "Christian Statesman," quoted, 101¹.
St. Louis "Globe-Democrat," on Sunday prosecutions, 325, 326.
Story, Justice Joseph, on reason for prohibiting religious tests, 43².
Stowell, Lord, quoted, 240⁰.
Strong, Justice, quoted, 240⁰.
Sullivan, Judge, decision of, 327⁰.
Sunday contracts, 144, 145, 153¹, 278.
Sunday laws, of the United States, see the various States; unconstitutional, 157⁰, 162¹ 166-191, 214; operation, 325-360; upheld, 146-150, 157-165, 331; basis of, 102¹, 149, 155¹-157⁰, 176, 215-219, 267-271, 272¹; deprive the individual of the inalienable right to acquire property, 189¹; history, 267-271; first Sunday law, 269; law of Charles II, the basis of American Sunday laws, 270, 271; report of Arkansas Bar Association, 330; open letters, 330-333; petitions for, 831-860.
Sunday mails, 58-126, 224; refusals to discontinue, 62³, 96; discontinuance of, would be injurious, 96; greater expedition of mails desired, 118; chains stretched across the street to stop, 124¹.
Sunday movement based on the religious idea of the day, 88⁰, 93, 94⁰, 102¹, 149, 267-271.
Sunday prosecutions, reasons which suggest, 61¹, 330-333; basis of, 149, 149¹.
Sunday transportation of mails coeval with the Constitution, 65.
Sunday work, "highly vicious and demoralizing," 148; Sabbatarians prosecuted for, 163¹, 167, 212, 213, 275², 281¹, 325, 330-360.
Sunderland, Rev. Byron, quoted, 272¹.
Sun-worship, 268-270, 270¹.
Swearingin, prosecuted for Sunday work, 163¹, 212, 213.
Swiggart, Judge, 350.
Sydney, Algernon, essay on government recommended by Jefferson, 23⁰.
Taney, Justice, quoted, 190.
Taxes for religious purposes, sinful and tyrannical, 25.
Tendency of public opinion, 5.
Tennessee, constitutional provisions concerning religion, 260, 261; Sunday law, 317, 318.
Terry, Chief Justice, decision declaring Sunday laws unconstitutional, 166, 168-178.
Texas, constitutional provisions concerning religion, 261; Sunday law, 318, 319.
Thanksgiving proclamations unconstitutional, 56, 57, 75.
Thurman, Judge, quoted, 420, 151-156, 153¹; cited, 155¹.
Toleration, theory of, not the same as that of religious liberty, 20⁰, 98, 98², 99⁰, 171-173, 209, 354.
Treaty with Tripoli, 54, 55; quoted, 9¹; cited, 42⁰.
Tyler's "Patrick Henry," quoted, 19¹, 20⁰.
Tyranny, 25, 335, 356¹.
Tyrants, rulers so called by Madison who exceed their authority by legislating on religion, 30.
United States Constitution, see Constitution of the United States.
United States government, no right to interfere with religion, 44.
United States Senate, report of, in 1815, 65-67; in 1829, 89-100; report of 1829 quoted, 5, 9¹, 55⁰, 154¹, 159¹, 172, 173, 209, 210.
"United States Statutes at Large," cited, 42⁰; quoted, 21, 43, 54, 55, 82.
Unrepealed dead-letter laws, danger of, 39⁰.
Utah, Sunday law, 319.
Vermont, Sunday law, 7²; constitutional provision concerning religion, 262; Sunday law, 7², 319, 320; constitutional provision concerning Sunday, 8⁰, 262; absurdity of such provision, 262¹.
Virginia act for establishing religious freedom, 23-26; written by Jefferson, 23¹, 38¹; reception in Europe, 23¹; its value, 38¹; quoted, 100¹.
Virginia, constitutional provision concerning religion, 262, 263; Sunday law, 320, 321.
Virginia Declaration of Rights, 17; drafting of, 17², 19¹; quoted, 28, 30, 31, 35, 37, 50¹, 73⁰, 99⁰.
Waite, Chief Justice, quoted, 50¹.
Walker, Rev. C. E., quoted, 94⁰.
Washington, constitutional provisions concerning religion, 264; compact with the United States, 264; Sunday law, 322.
Washington, George, influence, 5; asserts that man is accountable to God alone for his religious belief, 21⁰; Tripolitan Treaty, made during administration of, 42⁰, 55⁰.
"Weekly Arkansas Gazette," speech of Senator Crockett, 208-213.
Welch, Justice, opinion of, against the use of the Bible in the public schools, 192-201, 41⁰, 42⁰.
West Virginia, constitutional provisions concerning religion 263; Sunday law, 323.

Wharton, Dr. Francis, cited, 54².

Williams, Judge, gives a history of the Arkansas Sunday law of 1885, 330, 331.

Williams, Roger, 117⁰, 123¹; statesmanship, 51; banishment, 8⁰, 351; principles, 68¹.

Wilson, James P., memorial and petition, 61.

Winthrop, Governor, 123¹.

Wisconsin, constitutional provisions concerning religion, 264, 265; Sunday law, 323, 324; Supreme Court decides that reading the Bible in public schools is unconstitutional, 226-234.

Woman's Christian Temperance Union, 32, 85⁰, 86⁰, 102¹.

Woman's rights, 115⁰, 265.

Wood, cited, 131, 153⁰.

Woodcock, E. E., open letter on persecutions under the Arkansas Sunday law, 333.

"Works of Thomas Jefferson," quoted, 22¹, 23¹, 24¹, 39⁰, 40², 55⁰, 56, 56², 57, 69, 70, 80, 81, 90⁰, 100¹, 105¹, 109¹, 116⁰, 126¹, 127-138, 127¹, 128¹, 142⁰, 151².

Wright, Alex., 343-345.

"Writings of James Madison," quoted, 27¹, 27², 28⁰, 38¹, 39⁰, 55⁰, 70⁰, 73-79, 74¹, 77¹, 142, 143, 159¹, 172¹, 178¹, 201², 262¹.

Wyoming, constitutional provisions concerning religion, 265; Sunday law, 324.

Young, Henry E., Sunday laws of South Carolina and Vermont, 7².

